Submitted 19-189 Judge Davis
Argued
93 — Affirmed —
— Judge Davis —
Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~421.~~ 205

ANSON ELDRED, PLAINTIFF IN ERROR,

vs.

ANDREW SEXTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

FILED SEPTEMBER 17, 1872.

Oct. 7. 1872

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the supreme court of the State of Wisconsin, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Wisconsin, before you, between Anson Eldred, plaintiff, and Andrew Sexton, defendant, a manifest error hath happened, to the great damage of the said Anson Eldred, as by the complaint appears; and, it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twentieth day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

Allowed by me July 20th, 1872.

F. M. STEWART,
Clerk U. S. Circuit Court Western District Wisconsin.
LUTHER S. DIXON,
Chief Justice Sup. C't, Wis.

2 The return to the within writ appears by the schedule hereto annexed.

The return of the justices of the supreme court of the State of Wisconsin.

[SEAL.] Attest: LA FAYETTE KELLOGG,
Clerk Sup. Court Wis.

Filed Jul. 20, 1872. L. F. Kellogg, clerk sup. c't Wis.

3 UNITED STATES OF AMERICA, *ss:*

To ANDREW SEXTON, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein Anson Eldred is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 20th day of July, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-seventh.

LUTHER S. DIXON,
Chief Justice Supreme Court, Wisconsin.

We accept service of above citation this 20th day of July, A. D. 1872.
S. U. PINNEY,
Att'y for Def't in Error, Madison, Wisconsin.

Filed Jul. 20, 1872. L. F. Kellogg, clerk sup. c't, Wis.

4 Supreme court of the State of Wisconsin.

ANSON ELDRED, PLAINTIFF AND APPELLANT,
against
ANDREW SEXTON, DEFENDANT AND RESPONDENT.

Know all men by these presents that we, Robert W. Pierce and Jonathan Magie, of the city of Milwaukee, in the county of Milwaukee, and State of Wisconsin, are held and firmly bound unto the above-named Andrew Sexton, in the sum of five hundred dollars, to be paid to the said Andrew Sexton, his executors, administrators, or assigns: To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the fifteenth day of July, A. D. 1872.

Whereas the above-named Anson Eldred hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above-named Anson Eldred shall prosecute his said writ of error
5 to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

R. W. PIERCE. [SEAL.]
J. MAGIE. [SEAL.]

STATE OF WISCONSIN,
County of Milwaukee, ss:

Robert W. Pierce and Jonathan Magie, being duly sworn, doth each for himself depose and say that he is one of the obligors named in, and who executed the foregoing bond; that he is a resident within this State, and is worth the sum of one thousand dollars over and above all his debts, liabilities, and exemptions.

R. W. PIERCE.
J. MAGIE.

Sworn to before me this 15th day of July, A. D. 1872.
ALFRED L. CARY,
Notary Public, Milwaukee Co., Wis.

I hereby approve the within bond and sureties. July 20th, 1872.
LUTHER S. DIXON,
Chief Justice Supreme Court, Wis.

6 Pleas before the supreme court of the State of Wisconsin at a term thereof, begun and held at the capitol, in the city of Madison, in said State, on the first Tuesday, to wit, on the fourth day of June, A. D. 1872. Present, the Hon'l. Luther S. Dixon, chief justice; the Hon'l Orsamus Cole, & the Hon'l. W'm P. Lyon, associate justices; La Fayette Kellogg, clerk.

Be it remembered that, heretofore, to wit, on the fourth day of June, A. D. 1872, came into the office of the clerk of the supreme court of the State of Wisconsin, Anson Eldred, by his attorneys, Messrs. J. W. & A. L. Cary, and filed his certain notice of appeal and return of the clerk of the circuit court of Dane County thereto; which said notice of appeal and return is in the words and figures following, that is to say:

7 Circuit court, Dane County, State of Wisconsin.

ANSON ELDRED
against
ANDREW SEXTON.

Please to take notice that the above-named plaintiff, Anson Eldred, appeals to the supreme court of the State of Wisconsin from the judgment rendered in the above-entitled action, on the 17th day of April, A. D. 1872, in favor of the above-named defendant and against said plaintiff, and that said appeal is from the whole of said judgment.

Dated May 23rd, 1872.

Yours, &c.,

JOHN W. & A. L. CARY,
Plaintiff's Attorneys.

To Messrs. GREGORY & PINNEY,
Defendant's Attorneys.
And L. D. FROST, Esq.,
Clerk Circuit Court, Dane County.

Endorsement on back of notice as follows:

We hereby admit due service of the within notice of appeal, and also hereby waive the giving of any undertaking upon said appeal.

Dated May 23rd, 1872.

GREGORY & PINNEY,
Defendant's Attorneys.

8 Circuit court, county of Oconto.

ANSON ELDRED
against
ANDREW SEXTON.

The State of Wisconsin to the above-named defendant:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said complaint on their subscribers, at their office in Mitchell Bank Building, in the city of Milwaukee, and State of Wisconsin, within twenty days after the service of this summons on you, exclusive of day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for relief demanded in the complaint.

JOHN W. & A. L. CARY,
Of the City of Milwaukee, Plaintiff's Attorneys.

Dated at Milwaukee this 18th day July, 1870.

Endorsement on the back of summons as follows:

DANE COUNTY, *ss:*

I hereby certify that I did, on the 25th day of July, 1870, serve this summons & complaint upon the within-named defendant, Andrew
9 Sexton, at the city of Madison, in said county, by delivering and leaving with him personally a true copy thereof; and I endorsed on said copy, over my signature, the date of such service, & that the same was a true copy of the original.

B. HANCOCK, *Sheriff.*
By W. S. MAIN, *D. Sheriff.*

Fees: service, 1.00; tr., .20; copy, 23 f'l., 2.30—$3.50.

Circuit court, Oconto County.

ANSON ELDRED
against
ANDREW SEXTON.

The above-named plaintiff, by John W. & A. L. Cary, his attorneys, complaining, shows unto this honorable court that, on the 28th day of December, A. D. 1865, all the lands hereinafter described were Government lands, subject to private entry at the sum of one dollar and twenty-five cents per acre, at the United States land-office, at Menasha, in the State of Wisconsin.

10 That, on said 28th day of December, the said plaintiff, by his agent, Charles Turner, made application at said land-office to the register of said office to enter, and did enter, the southeast quarter of section twelve, town. thirty-one north, range fifteen east; and also the southeast quarter, the northeast quarter, and northwest quarter of section twenty-six, town. thirty-two north, of range fifteen east, all in the district of lands subject to entry at said Menasha, and then and there delivered to said register in payment therefor scrip, numbers 367, 365, 366, and 369, issued to the State of Connecticut, under agricultural college act of July 2, 1862, each for one hundred and sixty acres of land; and then and there received from said register duplicate certificates, under his official signature, certifying that said scrip had on that day been entered by Anson Eldred, as follows, to wit: number 367 on said southeast quarter of section twelve, of town. thirty-one, range fifteen; number 365 on said southeast quarter; number 366 on said northeast quarter; and number 369 on said northwest quarter of said section twenty-six, of town. thirty-two, of range fifteen east.

That, on the 15th day of January, 1866, the said plaintiff, by his said agent, Charles Turner, made application at said land-office to
11 the register of said office to enter and did enter the east half of the northwest quarter and the east half of the southwest quarter of section twelve, and the east half of the southwest quarter of section four, all of town. thirty-one north, of range fifteen east, in said district, and then and there delivered to said register in payment therefor land-warrants, numbered 93683 and 105067; and then and there received from said register a duplicate certificate, under his official signature, certifying as follows: that one military land-warrant, 93683, in the name of Isabel Martin, had that day been located by Anson Eldred upon the east half of the northwest quarter and east half of southwest quarter of section twelve, in township thirty-one, of range fifteen; and another certificate certifying that military land-warrant, number 105067, in the name of Cathrine B. Lamson, had that day been located by Anson Eldred upon

the east half of southwest quarter and west half of southeast quarter of section four, in township thirty-one, of range fifteen.

That, on the 9th day of March, 1866, the said plaintiff, by his agent, Charles Turner, made application at said land-office to the register of said office to enter and did enter the east half of the northwest
12 quarter of section four, town. thirty-one north, of range fifteen east, in said district, and did then and there deliver to said register in payment therefor military land-warrant, number 39887, in the name of Betsey Saul; and then and there received from said register a duplicate certificate, under his official signature, certifying that said land-warrant had on that day been located by Anson Eldred upon the east half of the northwest quarter and west half of the northeast quarter in section four, in township thirty-one, of range fifteen east. And the said plaintiff says that said last-named description exceeded the regular Government survey $\frac{99}{100}$ of an acre of land, and that at the time of entering the same he also paid the receiver of said land-office the sum of one dollar and twenty-four cents, and received the official certificate of said receiver therefor.

That, afterwards, on the 8th day of November, 1866, the Commissioner of the General Land-Office of the United States, without any legal or competent authority, undertook to set aside, vacate, or cancel the entries and purchases of said plaintiff of all said lands, so as afore-
13 said made at said land-office at Menasha; but that his attempted cancellation thereof and all his acts in the premises were without legal power or authority, and were and still are illegal and void as against said plaintiff. That, as said plaintiff is informed and believes, the ground upon which said Commissioner assumed to act in vacating and cancelling said entries was, that said lands were not subject to private entry at the time they were so entered by said plaintiff.

And said plaintiff further shows unto this court that, by an act of Congress, approved June 3, 1856, entitled "And act granting public lands to the State of Wisconsin to aid in the construction of railroads in that State," it was enacted as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by the way of Portage City to the St. Croix River or Lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and also from Fond du Lac on Lake Winne-
bago northerly to the State line, every alternate se'tion of land
14 designated by odd numbers for six sections in width, on each side of said roads, respectively. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any section or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier above specified so much land in alternate sections or part of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid; which lands (thus selected in lieu of those sold, and to which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers, and appropriated as aforesaid,) shall be held by the State of Wisconsin for the use and purpose

aforesaid: *Provided*, that the lands to be so located shall in no case be further than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided further*, that the lands hereby granted shall be exclusively applied in the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, that any *and* lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement, or in any manner or for any purpose whatsoever, be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

"SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

"SEC. 3. *And be it further enacted*, That the said lands hereby granted to said State shall be subject to the disposal of the legislature thereof for the purposes aforesaid and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

"SEC. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said States only in the manner following, that is to say: that a quantity of land not exceeding one hundred and twenty sections, and included within a contin'ous length of twenty miles of roads, respectively, may be sold; and when the governor of said State shall certify to the Secretary of the Interior that any twenty contin'ous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold; and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the lands unsold shall revert to the United States.

"SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may by law direct: *Provided*, That, until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

"Approved June 3d, 1856."

That, subsequently, the legislature of the State of Wisconsin granted the portion of said lands intended for the purpose of aiding in the construction of a railroad from Fond du Lac, on Lake Winnebago, northerly to the State line to the Chicago & Northern Railway Company; that said railroad was located, in pursuance of said act, prior to the year 1859, and that all the lands above described were within six miles of the line as so located; and that, by the terms of said act of June 3d, 1856, the price of said lands was fix' at double the minimum price of the public lands when sold.

That, afterwards, and prior to year 1859, the survey of said lands was completed, and the lands so as aforesaid entered by said plaintiff were, on the 3rd day of May, 1859, offered for sale at public sale by proclamation of the President of the United States, in accordance with the laws

of the United States, at said Mena'ha land-office, and at the
18 close of said public sale remained unsold, and were, from and after the year 1859, held subject to private entry, and were never after that time withdrawn from market until they were so as aforesaid entered by said plaintiff.

That, while said lands were so subject to private entry at double the minimum price of public lands, to wit, on the 25th day of April, 1862, the Congress of the United States passed a certain explanatory resolution in relation to said land-grant from said Fond du Lac, on Lake Winnebago, northerly; the location of said road, and price of said lands, which said explanatory resolution is in the words and figures following, to wit:

A resolution explanatory of and in addition to the act of June 3, 1856, granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State.

"*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the word "northerly" in the first section of the act entitled: "An act granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," approved June 3d, 1856, shall, without forfeiture to said State or its assigns of any rights or benefits under said act, or
19 exemption from any of the condition' or obligations imposed thereby, be construed to authorize the location of the line of railroad, in said first section provided for, upon any eligible route within ranges sixteen to twenty-three, inclusive, eas' of the fourth principal meridian; and the line of railroads as now located according to the records of the General Land-Office, in pursuance to said act, is hereby authorized to be changed to within the above specified limits: *Provided, however*, That upon the construction of said railroad upon the new line, or of a sufficient part thereof, according to the terms of said act, to the State of Wisconsin, its grantees or assigns, shall receive upon the route originally located, and in the manner prescribed by the act, the same quantity of lands and no more, or other, except as hereinafter provided for, as it or they would have received if such railroad had been constructed upon the line originally located.

"SEC. 2. *And be it further resolved*, That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from the town of Appleton, in said
20 State, to some point on Green Bay, at or near the mouth of Fox River, in said State, so much of the public lands of the United States, lying at or near the mouth of said river, in the county of Brown, and State of Wisconsin, known as the Fort Howard Military Reserve, as may be required for right-of-way tracts, turnouts, depots, workshops, warehouses, wharves, and other railroad use, not exceeding eighty acres, to be selected by the State of Wisconsin, or her assigns, as to exclude the fort therefrom: *Provided, however*, That if no railroad be constructed and in running order between the termini in this section mentioned, within three years from the passage of this joint resolution, then this grant will be void.

"SEC. 3. *And be it further resolved*, That the Secretary of the Interior and is hereby, authorized to cause all even sections, or parts of even sections of public lands, that may be brought within six miles of the new line of railroad as herein provided for, to be sold at the same price and in the same manner, as those have been upon the originally located route of railroad; and all purchasers, or their heirs, or assigns, within

the six-mile limits of the said originally located route, who
21 shall be more than six miles from the new line of route herein authorized, and who have paid the sum of two dollars and fifty cents an acre, shall have the right either to exchange their location upon the line as first established, to the new line, upon the same terms, in like quantities, and in the same manner as on the line first established, as aforesaid, or at their option, to enter without further payment, anywhere within the Menesha land district, in the State of Wisconsin, an additional quantity of public lands subject to private entry, at one dollar and twenty-five cents an acre, equal to the quantity entered by them at two dollars and fifty cents an acre, so that the lands originally entertered by them, shall be thus reduced to the rate of one dollar and twenty-five cents an acre.

SEC. 4. *And be it further resolved*, That the even sections of public lands reserved to the United States, by the aforesaid act of June 3, 1856, along the originally located route of railroad north of the town of Appleton, and along which no railroad has been constructed, shall hereafter be sold at one dollar and twenty-five cents an acre.

"Approved April 25, 1862."

22 That, afterwards, and prior to the times said lands were, so as aforesaid, entered by said plaintiffs, the Chicago and Northwestern Railway Company, acting under and in pursuance of said resolution, changed the location of their said line of road, and relocated the same more than six miles distant from the lands above-described, so as aforesaid entered by said plaintiff; that the lands above-described were not withdrawn from market, but remained subject to private entry; and, as this plaintiff is informed and believes, no order of any kind was made in relation to said lands by the General Land-Office, at any time after the passage of said explanatory resolution, until long after the said entries by this plaintiff had been made; and so the said plaintiff says that said lands, so as aforesaid entered by him, were, at the time they were so entered subject to private entry at one dollar and twenty-five cents per acre; that said entries so made by this plaintiff were properly and legally made, and that he hereby became, and was, and is still entitled to a patent therefor, vesting the legal title of said lands in him;
23 and that the aforesaid action of said Commissioner of the General Land-Office of the United States in setting aside, vacating, and cancelling, was, and is, unauthorized, illegal, and void.

That on the 18th day of December, 1869, the said defendant, well knowing the rights of this plaintiff, and that he had entered said lands as above-described, and that he was justly and legally e'titled to a patent therefor from the Government of the United States, and intending to cheat and defraud this plaintiff and entirely to deprive him of said lands, did fraudulently apply at said land-office, at Menasha aforesaid, to the register of said office to enter said lands in his own name and for his own account, and that the register of said office did then and there permit said defendant to enter said lands, and did then and there execute under his official signature and deliver to said defendant duplicates (so-called) for all of said lands, in the usual form; and that, as this plaintiff is informed and believes, said duplicates have been forwarded to the General Land-Office, and that an application is now
24 pending there for patents of said lands to be issued to said defendant; and said defendant now claims that, by virtue of such entries so made by him, that he is the owner of said lands, and that his right thereto is paramount and superior to the right of this plaintiff, and that he is entitled to have and receive said patents, and to hold and own

said lands without regard to the rights or claims of this plaintiff; whereas this plaintiff claims that he is the true and lawful owner thereof, and in virtue of his aforesaid entries he has a prior, paramount, and superior right to said lands; and that he is entitled to patents therefor from the Government of the United States, vesting the fee thereof in him.

That there is much valuable pine timber now standing on said lands which constitutes the principal value thereof; and that, as this plaintiff is informed and believes, the said defendant threatens to sell and dispose of the same, and cut the same off from said lands and otherwise greatly injure the same; and that, unless restrained by the order
25 of this court, this plaintiff fears that said defendant will cut and remove from said lands the timber standing thereon, and will procure patents for said lands, and then transfer the same to innocent purchasers; and that this plaintiff may thereby be defrauded out of his said lands.

The plaintiff, therefore, demands judgment against said defendant, that he assign and transfer to this plaintiff all right, title and interest which he has or pretends to have of, in, and to said lands; and that he assign to this plaintiff the duplicates so as aforesaid issued to him by said register, and if a patent or patents for said lands have been issued to him, or shall be so issued before the determination of this suit, that he conveys said lands, with covenants against his own acts, to this plaintiff; and that he be forever enjoined and restrained from setting up, or claiming any right or title of, in, or to said lands by virtue of his aforesaid entries or any proceedings subsequent thereto. And that in the meantime, and until further order of this court, the said defend-
26 ant be restrained and enjoined by the order of this court from selling or disposing of said lands, or the duplicates so as aforesaid issued to him; and that he be further restrained and enjoined from cutting any timber on said lands or committing any waste thereon, and for such other relief, and such further relief as to this court may seem meet and agreeable to equity and good conscience.

JOHN W. & A. L. CARY,
Plaintiff's Attorneys, Milwaukee, Wis.

STATE OF WISCONSIN,
Milwaukee County, ss:

Anson Eldred, the above-named plaintiff, being duly sworn, deposes and says that he has read the foregoing complaint, and knows the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ANSON ELDRED.

Subscribed and sworn to this 18th day of July, A. D. 1870, before me
GEO. COGSWELL,
Notary Public, Mil. Co., Wis.

27 Circuit court, Oconto County.

ANSON ELDRED
against
ANDREW SEXTON.

On reading the verified complaint in this action, and on motion of John W. & A. L. Cary, attorneys for plaintiff, it is ordered that the

defendant be, and he is hereby, restrained & enjoined from selling, or in any manner disposing of the lands mentioned in the foregoing complaint, or the duplicates for said lands therein mentioned; and that he be further restrained and enjoined from cutting any timber on said lands, or committing any waste thereon until the further order of this court.

By the court.

Dated July 21, 1870.

R. W. HUBBELL,
County Judge, Oconto County, Wis.

Endorsement on back of summons, complaint, and injunction, to wit:

DANE Co., *ss:*

I hereby certify that I did, on the 25th day of July, 1870, at the
28 city of Madison, in said county, serve this injunction upon the within-named defendant, Andrew Sexton, by delivering to and leaving with him personally a true copy thereof; and I exhibited to him this original; and I endorsed on said copy over my signature the date of such service, and that the same was a true copy of the original.

B. HANCOCK, *Sh'ff.*
By W. S. MAIN, *D. Sh'ff.*

Fees: service, $1.47.

Circuit court, Oconto County.

ANSON ELDRED
against
ANDREW SEXTON.

I do hereby fix and specify the sum of two hundred dollars as the amount of a written undertaking to be executed on the part of the plaintiff in the above-entitled action on the issuing of an injunction in said action according to the prayer of the complaint therein.

Dated July 21st, 1870.

By the court.

R. W. HUBBELL,
County Judge, Oconto Co., Wis.

29 Circuit court, Oconto County.

ANSON ELDRED
against
ANDREW SEXTON.

Whereas the plaintiff in the above-entitled action is about to apply for an injunction pursuant to the prayer of the complaint in said action:

Now, therefore, upon the granting of said injunction, we, Anson Eldred, of the city of Milwaukee and State of Wisconsin, the principal, and John Leigh & J. O. Keliher, of Stiles, in the county of Oconto and State aforesaid, do undertake on the part of said plaintiff, pursuant to the statute in such case made and provided, that he, said plaintiff, will pay to the said defendant, such damages, not exceeding the sum of two hundred dollars, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto.

ANSON ELDRED.
JOHN LEIGH.
J. O. KELIHER.

30 STATE OF WISCONSIN,
County of Oconto, ss:

J. O. Keliher, of said county, being duly sworn, deposes and says that he is one of the subscribers to the foregoing undertaking; that he is a resident of the county of Oconto, in the State of Wisconsin, and that he is worth the sum of four hundred dollars over and above all his debts and exemptions.

J. O. KELIHER.

Sworn and subscribed to before me this 21st day of July, A. D. 1870.
JOSEPH HALL,
Clerk of Court, Oconto Co., Wis.

Endorsement on back, to wit:

I approve of the within undertaking as to the form and sufficiency of the sureties.

Dated July 21st, 1870.

R. W. HUBBELL,
County Judge.

31 STATE OF WISCONSIN,
County of Oconto:

I, O. W. Bloch, register of deeds, in and for the county of Oconto, in the State of Wisconsin, do hereby certify that the original notice of pendency of action, of which the foregoing and annexed is a copy, was filed in the office of the register of deeds for said county of Oconto, at Oconto, in said county, on the 21st day of July, A. D. 1870, at 4.30 o'clock p. m. of that day; and that I have compared the foregoing and annexed with the said original notice of pendency of action on file in the office of the register of deeds for said county of Oconto, and that the same is a true copy therefrom, and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed my official seal, at Oconto, in the county of Oconto, and State of Wisconsin, the 21st day of July, A. D. 1870.

[L. S.]

O. W. BLOCH,
Register of Deeds,
By B. G. GRUNERT, *Deputy.*

32 Circuit court, Oconto County.

ANSON ELDRED
against
ANDREW SEXTON.

Please to take notice that an action affecting the title to the real estate hereinafter described is now pending in the circuit court in & for Oconto County, in the State of Wisconsin, wherein the above-named A'son Eldred is plaintiff, and the above-named Andrew Sexton is defendant; that the object of said action is to compel said defendant to transfer and convey to said plaintiff whatever right, title, and interest he, said defendant, may have in & to said real estate; that the real estate affected by said action, and situated, lying, and being in said county of Oconto, and State of Wisconsin, is described as follows, to wit: The southeast quarter of section twelve, township thirty-one north, range fifteen east; the southeast quarter, the northeast quarter, and the

northwest quarter of section twenty-six, township thirty-two
33 north, of range fifteen east; the east half of the northwest quarter and the east half of the southwest quarter of section twelve, and the east half of the southwest quarter of section four, all in township thirty-one north, of range fifteen east; and the east half of the northwest quarter of section four, township thirty-one north, of range fifteen east.

Dated July 18th, 1870.

JOHN W. & A. L. CARY,
Plaintiff's Attorneys, Milwaukee, Wis.

Circuit court, Oconto County.

ANSON ELDRED
against
ANDREW SEXTON.

The attorneys for the respective parties to the above-entitled action having stipulated, in writing, to change the place of trial of said action to Winnebago County, it is hereby ordered that the place of trial of said action be changed from Oconto County to Winnebago County, in the State of Wisconsin.

Dated May 16th, 1871.

By the court.

E. W. ELLIS, *Judge.*

34 Oconto County, circuit court.

ANSON ELDRED
vs.
ANDREW SEXTON.

STATE OF WISCONSIN, *Oconto County, ss:*

I, J. Hall, clerk of the circuit court in and for said county and State, do hereby certify that the papers hereto attached are the original papers and all the papers on file and of record in my office in the above-entitled cause, and that the same are sent to the circuit court of Winnebago County, Wis., pursuant to the order changing the venue in said cause to said Winnebago County.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at Oconto, this 15th day of August, 1871.

[L. S.] JOSEPH HALL,
Clerk Cir. Court, Oconto Co., Wisconsin.

35 State of Wisconsin, circuit court, Winnebago County.

ANSON ELDRED
vs.
ANDREW SEXTON.

It is stipulated that the place of trial of this action be changed to Dane County, Wisconsin, and that the cause be placed on the calendar of the November term of the Dane County circuit court to be held Nov. 8th, A. D. 1871, for trial, without further notice or note of issue.

Dated Nov. 2nd, A. D. 1871.

GREGORY & PINNEY,
Deft's Att'ys.
JOHN W. & A. L. CARY,
Plff's Att'ys.

36 State of Wisconsin, circuit court, Winnebago Co.

ANSON ELDRED, PLAINTIFF,
ag't
ANDREW SEXTON, DEFENDANT.

On the written consent of the parties filed in this action, ordered that the place of trial of this action be, and the same is hereby, changed to Dane County, in said State, and that the clerk of this court certify & transmit these papers & proceedings herein to the clerk of the circuit court for Dane County, according to law.

Dated Nov. 2nd, 1871

By the court:

D. J PULLING, *Judge.*

Winnebago County circuit court, September term, 1871.

THURSDAY MORNING, *Nov. 2d*, 1871.

9 o'clock court opened. * * * * *

ANSON ELDRED
vs.
ANDREW SEXTON.

37 Cause called for trial. Parties file stipulation and venue in said cause. Ordered changed to Dane County.

* * * * * * *

Winnebago County circuit court.

ANSON ELDRED
vs.
ANDREW SEXTON.

WINNEBAGO COUNTY, *ss:*

I, H. B. Harshaw, clerk for the circuit court in and for said county and State, do hereby certify that the papers hereto attached are original papers, and all the papers on file and of record in my office in the above-entitled cause; and that the same are sent to the circuit court of Dane County, Wisconsin, pursuant to the order changing venue to said Dane County.

In testimony whereof I have hereto set my hand & the seal of said court this 2nd day of November, 1871.

[L. S.] H. B. HARSHAW, *Clerk.*

38 Circuit court for Dane County.

ANSON ELDRED
vs.
ANDREW SEXTON.

It is agreed that the defendant, Sexton, may amend his answer herein by inserting after the end of the third paragraph thereof, the following, to wit: "And the said defendant, further answering, upon information and belief, alleges that, afterward, the said plaintiff, Anson Eldred, pur-

suant to the acts of Congress, appealed from the decision & determination of the Commissioner of the General Land Office in so vacating and cancelling said several entries to the Secretary of the Department of the Interior; that said appeal came on to be heard before said Secretary, in the form of law, and was argued by counsel for said Eldred & other parties interested, and was submitted to him for his decision; but, afterwards, and on the 18th day of April, A. D. 1867, by the decision and judgment of said Secretary, then duly given on the
39 appeal aforesaid of said plaintiff, the aforesaid decision and determination of the Commissioner of the General Land-Office in vacating and cancelling the aforesaid entries so made by said plaintiff was in all things ratified, approved, and affirmed; that said decision so made as aforesaid by the Secretary of the Interior still*s* remains in full force and effect, not reversed, or in any way appealed from or set aside; wherefore the said defendant submits that said plaintiff is concluded and estopped from insisting on the claim set forth in the complaint in this action.

JOHN W. & A. L. CARY,
Attorneys for Plaintiff.

State of Wisconsin, circuit court for Oconto County.

ANSON ELDRED, PLAINTIFF,
ag't
ANDREW SEXTON, DEFENDANT.

The above-named defendant, in answer to the plaintiff's com-
40 plaint, upon information and belief, denies that the several tracts of land in said complaint mentioned, or either of them, on the 28th day of December, A. D. 1865, or at any time thereafter, until the 17th day of December, A. D. 1869, were subject to private entry at the price of one dollar & twenty-five cents per acre, at the United States land-office at Menasha, in the State of Wisconsin, or elsewhere.

And said defendant further alleges, upon information and belief, that, prior to the making of said several alleged entries of said several tracts of land by Anson Eldred, as stated in said complaint, the said several tracts of land were duly and legally withdrawn from market, and that the same were not thereafter restored to market, so as to be subject to private entry at the price of one dollar and twenty cents per acre, until the 17th day of December, A. D. 1869, for the reason that the same fell and were within the limits of the grant of land to the Chicago and North-western Railway Company mentioned in the complaint; that the
41 several entries thereof made by said Eldred were and are for that reason illegal and void, and he was permitted to make the same by and through the mistake or inadv*enture* of the officers of the land-office at Menasha; and the said several duplicate certificates of entries by said Eldred were issued to him by and through the error, mistake, and inadvertence of the officers of said land-office; and the said certificates and each of them were issued contrary to & in violation of law; and the said entries and each of them were for the reasons aforesaid cancelled and set aside in due form of law, at or about the time mentioned in said complaint; and the said Eldred at or about that time surrendered said duplicate certificates of said several entries in the complaint mentioned at the General Land-Office, and received back from said office the several land-warrants and the agricultural college scrip in said complaint mentioned with which he had attempted to enter said

several tracts of land, and had ever since then retained the same to his own exclusive use and benefit.

And the said defendant, further answering, says that, as to
42 when the survey of said lands was completed, and whether they were offered at public sale by proclamation of the President of the United States, or otherwise, on the 3rd of May, 1859, and at Menasha land-office, this defendant has no knowledge or information sufficient to found a belief; but, upon information and belief, he denies that they ever were subject to private entry at the rate of one dollar and twenty-five cents per acre, until the 17th day of December, A. D. 1869.

And the said defendant, further answering, alleges that he has no knowledge or information sufficient to form a belief as to whether the Chicago and Northwestern Railway Company changed the location of their road, before the date of the several alleged entries of said lands by said plaintiff; and he denies, upon information and belief, that the plaintiff, by virtue of said entries, or either of them, acquired any interest in or to said tracts of land, or either of them, and denies that said plaintiff is entitled or ever was entitled to a patent for said tracts of land, or either of them.

43 And the said defendant, further answering, upon information and belief, alleges that, on or about the 13th day of November, A. D. 1869, notice was given by the officers of the said Menasha land-office, in pursuance of instructions from the Commissioner of the General Land-Office of the United States, that the aforesaid lands, (with others,) which had been withdrawn from market by reason of cancelled entries, would be restored to and subject to private entry on and after the 17th day of December, 1869; and that, pursuant to such instructions and said notice, the same were so restored and made subject to private entry, on the said 17th day of December, A. D. 1869; and that, afterwards, and on or about the 18th day of December, A. D. 1869, this defendant entered, and paid for the same, at the said Menasha land-office, and received upon said entry thereof duplicate certificates thereof, as he lawfully might do. And the said defendant denies that he, at the time of said entry, had any notice or knowledge whatever of any claim of the plaintiff to said lands, or any part thereof, or that he had or pretended to have any claim or right to the same, or any part thereof; and denies that he intended to cheat or defraud the plaintiff, or deprive him
44 of any right whatever, in making said entries; and denies that his application to enter said lands, or his entry thereof, was fraudulently made; and he denies all fraud charged against him in the premises, and avers that the said entries made by him, of said tracts of land, were duly and legally made, and by means whereof this defendant became lawfully and justly entitled to patents therefor, from the United States, which he has since then received.

And the said defendant, further answering, avers that the said plaintiff, by a voluntary surrender of the duplicate certificates issued by him, and by receiving back said land-warrants and agricultural college scrip, as the complaint mentioned, with which he sought to enter said lands, and by retaining and keeping the land to his own use and benefit, as hereinbefore alleged, has abandoned, surrendered, and forfeited all claim and right in or to said lands, and each and every tract thereof, whether he might or otherwise might have had, and that he is now by the acts aforesaid estopped from making any claims thereto, as against this defendant. Wherefore said plaintiff demands judgment, that the said pretended claims of said plaintiff in and to said lands be adjudged to be null and void as against this defendant, and that the defend-

45 ant may recover against the plaintiff the costs and disbursements of this action.

GREGORY & PINNEY,
Deff't's Att'ys, Madison, Wis.

STATE OF WISCONSIN,
Dane County, ss:

Andrew Sexton, the above-named defendant, being duly sworn, says that he has read the foregoing answer, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true.

ANDREW SEXTON.

Subscribed and sworn to before me Aug. 20th, A. D. 1870.
CHANDLER P. CHAPMAN,
Notary Public, Dane Co., Wis.

State of Wisconsin, circuit court for Dane County.

ANSON ELDRED, PLAINTIFF,
ag't
ANDREW SEXTON, DEFENDANT.

The issues of fact joined in this action came on to be tried be-
46 fore the Hon. Alva Stewart, circuit judge, & judge of *of* said court, (in vacation and at chambers, pursuant to a stipulation and agreement made between the parties hereto, by their attorneys, in open court, by which it was stipulated and agreed that the same should be so tried, and should be decided in term time, and in open court, with the same force and effect as if the same had been tried before said court in term time;) and the said issue having been tried, and submitted accordingly, and having been decided by said court in term time, in open court, to wit, at the April term of said court, A. D. 1872, on the 3rd day of said month; and upon the evidence offered by the parties and received in said trial, and upon the arguments made therein by the counsel for the respective parties, the court finds the following facts proved, that is to say: That at several times stated in said complaint the said plaintiff applied to the register of the land-office in Menasha, to enter by private entry the several tracts of land in said complaint described, at the price and sum of one dollar and twenty-five cents per acre, and was permitted by said register to enter the land, paying therefor, as alleged in
47 said complaint, and received certificates of such entries in the usual form; that, afterwards, and in or about the 3rd day of November, A. D. 1866, the said several entries having been reported to the Commissioner of the General Land-Office of the United States, at Washington, the said Commissioner set aside and cancelled said several entries, upon the ground and for the reason that the said several tracts of land were not, at the time said entries were allowed to be made, subject to private entry at the sum of one dollar and twenty-five cents per acre; that thereafter the said plaintiff appealed from the action of the Commissioner of the General Land-Office, in cancelling said entries, to the Secretary of the Interior, who, after hearing said plaintiff upon said appeal, affirmed that action of the Commissioner of the General Land-Office in the premises.

The said lands were all within the six miles limit of the land-grant mentioned in the complaint according to the first location of the route

of said road, as it was located from Fond du Lac northerly to the
48 State line by the Chicago & Northwestern Railway Company, pursuant to said grant prior to 1859.

That the public survey of said lands was completed at or about the time of the location of the route of said road as aforesaid, and before said entries by plaintiff. And the lands within the limits of said grant being the odd-numbered sections, (act of Congress June 3, 1856,) were granted by the legislature of Wisconsin to the said Chicago and Northwestern Railway Company, and the even-numbered sections were reserved; that the lands described in the plaintiff's complaint were never offered for sale at any land-sale at the minimum price of the public lands, of one dollar and twenty-five cents per acre, until a long time after the alleged entries of said plaintiff were made, and not until a short time before the defendant made the entries mentioned in said complaint upon which patents were issued to him in the usual form, July 1st, A. D. 1870.

By the proclamation of President Buchanan of Dec. 24th,
49 1858, the even-number' section' within the limits of said grant, including the lands described in the complaint, were offered at public sale on the second day of May, 1859, as far north as township thirty-three, and no farther, a distance of about fifty miles south of the State line, and terminus of the route of said road, and said land remained unsold at the end of said sale; and said lands lie south of township number thirty-three, and no proof has been offered to show that any of the lands north of township thirty-three had been, prior to said plaintiff's entry, offered for sale pursuant to the proclamation of the President, at any rate or price whatever; that, afterwards, pursuant to the proclamation of President Johnson, June 4th, 1868, and orders from the Commissioner of the General Land-Office, the lands described in said complaint were offered at public sale at the price of one dollar and twenty-five cents per acre, as being cancelled entries; and remaining unsold at conclusion of such sale, the same were entered at private entry by the defendant, in or about the 18th day of Dec. A. D. 1869, as alleged in his answer, at the price of one dollar and twenty-five cents per acre.

50 That, at the time of making such entries, the defendant knew that prior entries of said lands had been cancelled, and the records of the land-office at Menasha, where he made said entries, showed the facts in relation to the making and cancellation of the entries under which the plaintiff claims; that, before the plaintiff made his entries, the route of the road of said railway company was so changed and relocated, pursuant to the resolution of Congress of April 23rd, 1862, that the lands in question were left and situate more than six miles from the line of the newly located route; that the plaintiff did not receive back the price and consideration paid by him upon making said entries as alleged in said defendant's answer.

As conclusions of law, I find that the several tracts of land described in the plaintiff's complaint were not subject to private entry at the time he made his said entries; that he acquired by said entries no right, title, or interest whatever in or to said lands, or any part thereof; and that judgment s'ould be entered herein denying the relief prayed for
51 by said plaintiff, and adjudging that he take nothing by his said complaint; and that the defendant recover against the plaintiff

his costs and disbursements in this action; and judgment is ordered accordingly.

Dated April 11th, A. D. 1872.

By the court:

ALVA STEWART, *Judge.*

State of Wisconsin, circuit court for Dane County.

ANSON ELDRED, PLAINTIFF,
ag't
ANDREW SEXTON, DEFENDANT.

The issues joined in this action came on to be tried before the Hon. Alva Stewart, circuit judge, and judge of said court in vacation, under and in pursuance of a stipulation made herein in open court, to the effect that the said issues should be so tried and afterwards decided in open court, with the same force and effect as if tried in open court, and the said issues having been tried and submitted accordingly: and
52 the same having been decided by said court in open court, on the third day of April, A. D. 1872, at the April term thereof, the Hon. Alva Stewart, circuit judge, presiding, and the finding and decision of said court, both as to the facts and the law, having been duly filed and entered herein, whereby it is ordered that final judgment on the merits herein be entered denying the relief prayed for by the plaintiff, and for the defendant for his costs:

Now, on motion of Gregory & Pinney, attorneys for the defendant, it is considered and adjudged that the relief prayed for by the plaintiff be, and the same is hereby, denied; and that the plaintiff take nothing by his said complaint, and the defendant, as to the matters alleged against him, go without day. And it is further considered and adjudged that the defendant, Andrew Sexton, recover against the plaintiff, Anson Eldred, the sum of fifty-seven dollars and seventy-four cents for his costs and disbursements in this action, and that he have execution therefor.

Dated April 17th, A. D. 1872.

By the court:

ALVA STEWART, *Judge.*

53 Circuit court, Dane County.

ANSON ELDRED
against
ANDREW SEXTON.

And now comes the above-named plaintiff, by John W. & A. L. Cary, his attorneys, and excepts to the finding and decision of the court in the above-entitled action, as follows, to wit:

1st. Said plaintiff excepts to so much and such part of said finding and decision as is in the words and figures following, to wit: "That, afterwards, and on or about the 3d day of December, A. D. 1866, the said several entries having been reported to the Commissioner of the General Land-Office of the United States, at Washington, the said Commissioner set aside and cancelled said several entries, upon the ground and for the reason that the said several tracts of land were

not, at the time said entries were allowed to be made, subject to private entry, at the sum of one dollar and twenty-five cents per acre; that, thereafter, the said plaintiff appealed from the action of the Commissioner of the General Land-Office in cancelling said entries, to the Secretary of the Interior, who, after hearing said plaintiff upon
54 said appeal, affirmed the action of the Commissioner of the General Land-Office in the premises.

2nd. Said plaintiff further excepts to so much and such part of said finding and decision as is in the words and figures following, to wit: "That the lands described in the plaintiff's complaint were never offered for sale at any land-sale at the minimum price of the public lands of one dollar and twenty-five cents per acre, until a long time after the alleged entries of said plaintiff were made, and not until a short time before the defendant made the entries mentioned in said complaint, upon which patents were issued to him in the usual form, July 1st, A. D. 1870."

3d. Said plaintiff further excepts to that part of said finding and decision which finds, as a fact, that the even-numbered sections within the limits of said land-grant, and lying north of township number thirty-three, were not offered at public sale, at two dollars and fifty cents per acre, on the second day of May, 1859, by the proclamation of President Buchanan of December 24th, 1858.

4th. Said plaintiff further excepts to so much and such part
55 of said finding and decision as is in the words and figures following, to wit: "And no proof has been offered to show that any of the lands north of township thirty-three had been, prior to the plaintiff's entry, offered for sale pursuant to the proclamation of the President, at any rate or price whatever."

5th. Said plaintiff further excepts to so much and such part of said finding and decision as is in the words and figures following, to wit: "That, afterwards, pursuant to the proclamation of President Johnson, June 1st, 1866, and orders from the Commissioner of the General Land-Office, the lands described in said complaint were offered at public sale, at the price of one dollar and twenty-five cents per acre, as being cancelled entries, and remaining unsold. At the conclusion of such sale the same were entered at private entry by the defendant, on or about the 18th day of Dec., A. D. 1869, as alleged in his answer, at the price of one dollar and twenty-five cents per acre."

6th. Said plaintiff further excepts to so much and such part of said finding and decision which finds, as conclusions of law, the following, to wit: "That the several tracts of land described in the plaint-
56 iff's complaint were not subject to private entry at the time he made his said entries; that he acquired, by said entries, no right, title, or interest whatever in or to said lands, or any part thereof, and that judgment should be entered herein denying the relief prayed for by said plaintiff, and adjudging that he take nothing by his said complaint, and that the defendant recover against the plaintiff his costs and disbursements in this action; and judgment is ordered accordingly."

JOHN W. & A. L. CARY,
Pl'ff's Att'ys.

Circuit court, Dane County, State of Wisconsin.

ANSON ELDRED
against
ANDREW SEXTON.

Afterwards, to wit, on the 6th day of March, A. D. 1872, at the city of Madison, and county of Dane, and State of Wisconsin, the issues joined in this action came on to be tried before the Hon. Alva
57 Stewart, judge of the circuit court in and for said county of Dane, and in said State of Wisconsin, in vacation and at chambers, pursuant to a stipulation and agreement made and entered into between the parties to this action by their respective attorneys, in open court, by which it was stipulated and agreed that said action should be so tried, and should be decided in term time, and in open court, with the same force and effect as if the same had been tried before the court in term time, Messrs. Cary and Cottrill appearing as the attorneys and of counsel for said plaintiff, and Messrs. Gregory and Pinney appearing as the attorneys and of counsel for said defendant.

And said plaintiff, to maintain said issues on *its* part, introduced and read in evidence a certain act of Congress, approved June 3rd, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in that State;" which said act of Congress is set forth at length in the complaint in this action, and to which reference is hereby made.

That it was then and there admitted upon said trial, that,
58 subsequent to the passage and approval of said land-grant act, and prior to the year 1859, the legislature of the State of Wisconsin accepted said land-grant, and granted the portion of said lands intended for the purpose of aiding in the construction of a railroad from Fond du Lac, on Lake Winnebago, northerly to the State line, to the Chicago and Northwestern Railway Company; and that, prior to the year 1859, the said Chicago and Northwestern Railway Company, in pursuance of the act granting said lands to it, located its line of railroad through the said grant of lands to it; and that the lands in question, and which are particularly described in the complaint in this action, were within six miles of the said line of railroad so located. And said plaintiff, to further maintain said issues on its part, introduce' and read in evidence the proclamation of James Buchanan, President of the United States of America, bearing date the 24th day of December, A. D. 1858, and numbered 628, which said proclamation was as follows, to wit:

"By the President of the United States:

"In pursuance of law I, James Buchanan, President of the United States of America, do hereby declare and make known that pub-
59 lic sales will be held at the under-mentioned land-offices in the State of Wisconsin, at the periods hereinafter designated, to wit:" (Here follows a list of land-sales to be held at several different land-offices in said State, and then comes the following:) "At the land-office at Menasha, commencing on Monday, the second day of May, next, for the disposal of the vacant lands in the even-numbered sections within the undermentioned townships, which remain to the United States, within six miles on each side of the railroad, 'from Fond du Lac, on Lake Winnebago, northerly to the State line,' subject as re-

quired by law, to a minimum of two dollars and fifty cents per acre, viz:

"North of the base line and east of the fourth principal meridian.

"Townships 31 and 32, of range 14.

"Townships 17, 18, 19, 24, 25, 26, 27, 31, 32, and 33, of range 15.

"Townships 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 31, 32, and 33, of range 16.

"Townships 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, of range 17.

"Townships 15, 16, 20, 21, 22, and 23, of range 18."

(Here follows a sale designated at the land-office at La Crosse, and then comes the following:)

60 "Lands approp'iated by law for the use of schools, Indian, military, and other purposes, together with the swamp and overflowed lands, will be excluded from the sales.

"The tracts along the lines of the railroads will be sold, subject to the right of way granted by the act of 4th August, 1852, for said railroads, and the particular tracts cut by the routes will be sold as containing the quantities respectively shown on the official plats, without deductions.

"The offering of the above lands will be commenced on the days appointed, and will proceed in the order in which they are advertised until the whole shall have been offered and the sales thus closed, but no sale shall be kept open longer than two weeks, and no private entry of any of the above lands will be admitted until after the expiration of the two weeks.

I think this admission made; if not, it was conceded all the way through. Disallowed. A. S.

"Given under my hand, at the city of Washington, this twenty-fourth day of December, anno Domini one thousand eight hundred and fifty-eight.

JAMES BUCHANAN.

"By the President:

"THO'S A. HENDRICKS,
"*Commissioner of the General Land-Office.*"

61 It was then and there admitted on said trial that the lands in question in this action, together with other lands, were, in pursuance of the said President's proclamation, offered for sale at the land-office at Menasha, at the public sale commencing on the 2nd day of May, 1859, and that, at the close of said sale, the said lands in question remained unsold.

Don't think I made any such admission. The point was left to proof. We object to this.

And said plaintiff, to further maintain said issues on its part, offered and read in evidence a certain explanatory resolution passed by the Congress of the United States, and approved April 25th, 1862, entitled "A resolution explanatory of, and in addition to, the act of June 3rd, 1856, granting public lands to the State of Wisconsin to aid in the construction of railroads in said State;" which said explanatory resolution is set forth at length in the complaint in this action, and to which reference is hereby made.

It was then and there admitted, on said trial, that, after the passage and approval of said explanatory resolution, and prior to the time of the alleged entries by said plaintiff of the lands in question in this action, the said Chicago and Northwestern Railway Company, under and in pursuance of said explanatory resolution, changed the location of their said line of railroad, and relocated the same more than six miles distant from the lands in question in this action and described in the complaint herein, so that the lands in question

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were not embraced within the new location, or within the six-mile limits thereof.

And said plaintiff, to further maintain said issue on his part, offered and read in evidence exemplified copies of the original duplicate certificates of location by said plaintiff of the lands in question, certified to by the Commissioner of the General Land-Office at Washington, which said copies were as follows, to wit:

"Agricultural-college act of July 2, 1862.

"REGISTER'S OFFICE,
"*Menasha, Wis., Dec.* 28, 1865.

"Scrip No. 366, in the name of the State of Connecticut, has this day been located by Anson Eldred upon the N. E. ¼ (quarter) of section 26, in township 32, of range 15, subject to any pre-emption-claim which may be filed for said land within forty days from this date.

"Contents of tract located, 160 acres.

"ANDREW B. JACKSON, *Register.*"

"Agricultural-college act of July 2, 1862.

63 "REGISTER'S OFFICE,
"*Menasha, Wis., Dec.* 28, 1865.

"Scrip No. 367, in the name of the State of Connecticut, has this day been located by Anson Eldred upon the S. E. ¼ (quarter) of section 12, in township 31, of range 15, subject to any pre-emption-claim which may be filed for said land within forty days from this date.

"Contents of tract located, 160 acres.

"ANDREW B. JACKSON, *Register.*"

"Agricultural-college act of July 2, 1862.

"REGISTER'S OFFICE,
"*Menasha, Wis., Dec.* 28th, 1865.

"Scrip No. 365, in the name of the State of Connecticut, has this day been located by Anson Eldred upon the S. E. ¼ (quarter) of section 26, in township 32, of range 15, subject to any pre-emption-claim which may be filed for said land within forty days from this date.

"Contents of tract located, 160 acres.

"ANDREW B. JACKSON, *Register.*"

"Agricultural-college act of July 2nd, 1862.

"REGISTER'S OFFICE,
"*Menasha, Wis., Dec.* 28, 1865.

"Scrip No. 369, in the name of State of Connecticut, has this day been located by Anson Eldred upon the N. W. ¼ (quarter) of section 26, in township 32, of range 15, subject to any pre-emption-claim
64 which may be filed for said land within forty days from this date.

"Contents of tract located, 160 acres.

"ANDREW B. JACKSON, *Register.*"

"Military bounty-land act of March 3rd, 1865.

"REGISTER'S OFFICE,
"*Menasha, Wis., Jan.* 15, 1866.

"Military land-warrant No. 93683, in the name of Isabel Martin, has this day been located by Anson Eldred upon the E. ½ N. W. ¼ & E. ½ S.

W. ¼ (quarter) of section 12, in township 31, of range 15, subject to any pre-emption claim which may be filed for said land within forty days from this date.

"Contents of tract located, 160 acres.

"ANDREW B. JACKSON, *Register.*"

"Military bounty-land act of Ma'ch 3rd, 1855.

"No. 26834.] "RECEIVER'S OFFICE,

"*at Menasha, Wis., 9th March*, 1866.

"Received from Anson Eldred, of Milwaukee County, Wisconsin, the sum of one dollar and twenty-four cents, being in full for acres and ninety-nine-hundredths of the east half of the northwest quarter and the west half of the northeast quarter of section No. 4, in township No. 31, of range No. 15, being excess in said tract over the area located
65 in virtue of military land-warrant No. 39887 in favor of Betsey Soule.

"$1.24.

"FRANCIS A. RYAN, *Receiver.*"

"Military land act of March 3rd, 1855.

"REGISTER'S OFFICE,

"*Menasha, Wis., Jan.* 15, 1866.

"Military land-warrant No. 105067, in the name of Cathrine B. Lamson, has this day been located by Anson Eldred upon the E. ½ S. W. ¼ and W. ½ S. E. ¼ (quarter) of section 4, in township 31, of range 15, subject to any pre-emptive claim which may be filed for said land within forty days from this date.

"Contents of tracts located, 160 acres.

"ANDREW B. JACKSON, *Register.*"

"Military bounty-land act, March 3rd, 1855.

"REGISTER'S OFFICE,

"*Menasha, Wis., March 9th*, 1866.

"Military land-warrant No. 39887, in the name of Betsey Soule, has this day been located by Anson Eldred upon the E. ½ of N. W. ¼ and W. ½ N. E.-quarter of section 4, township 31, of range 15, subject to any pre-emptive claim which may be filed for said land within forty days from this date.

"Contents of tracts located, $160\frac{99}{100}$ acres.

"ANDREW B. JACKSON, *Register.*"

That, before the exemplified copies of the original duplicate certificates of location were read in evidence as aforesaid, the counsel
66 for defendant objected to their being read in evidence, upon the ground that they were immaterial and irrelevant; which said objection was overruled by said circuit judge.

And said plaintiff, to further maintain said issues on his part, produced and offered to read in evidence certain certificates of entry, covering the lands in question, and certified to by Joseph Keyes, register of said Menasha land-office, under date of January 25th, 1872; to the reading of which in evidence the counsel for defendant then and there objected, upon the ground that they were irrelevant and immaterial;

which said objection was then and there overruled by said circuit judge, and thereupon said certificates of entry were read in evidence, as follows, to wit:

"*Certificate of entry.*

"REGISTER'S OFFICE,
"*Menasha, Wis., January 25th,* 1872.

"I hereby certify that, from the books and records of the United States land-office at Menasha, Wisconsin, it appears that Mr. Anson Eldred, on the twenty-eighth (28) day of December, 1865, at Menasha, Wisconsin, entered, purchased, and paid for the whole of section twenty-six, (26,) township thirty-two (32) north, of range fifteen, (15,)
67 containing six hundred and forty acres, located with agricultural-college scrip, and cancelled by the Commissioner of the General Land-Office Nov. 3rd, 1866.

"JOSEPH KEYES, *Register.*"

"*Certificate of entry.*

"REGISTER'S OFFICE,
"*Menasha, Wis., January 25th,* 1872.

"I hereby certify that, from the books and records of the United States land-office at Menasha, Wisconsin, it appears that Mr. Anson Eldred, on the ninth (9) day of March, 1866, at Menasha, Wisconsin, entered, purchased, and paid for the west half of the north-east q'r & east half of the northwest q'r of section four, township thirty-one (31) north, of range fifteen, (15,) containing one hundred and sixty and $\frac{99}{100}$ acres, located with M. B. land-warrant, and cancelled by the Commissioner of the Gen'l Land-Office Nov. 8th, 1866.

"JOSEPH KEYES, *Register.*"

"*Certificate of entry.*

"REGISTER'S OFFICE,
"*Menasha, Wis., January 25th,* 1872.

"I hereby certify that, from the books and records of the United States land-office at Menasha, Wisconsin, it appears that Mr.
68 Anson Eldred, on the fifteenth (15) day of January, 1867, at Menasha, Wisconsin, entered, purchased, and paid for the west half of southeast q'r and east half of southwest q'r of section four, (4,) township thirty-one (31) north, of range fifteen, (15,) containing one hundred and sixty acres, located with M. B. land-warrant, and cancelled by the Commissioner of the Gen'l Land-Office Nov. 8th, 1866.

"JOSEPH KEYES, *Register.*"

"*Certificate of entry.*

"REGISTER'S OFFICE,
"*Menasha, Wis., January 25th,* 1872,

"I hereby certify that, from the books and records of the United States land-office at Menasha, Wisconsin, it appears that Mr. Anson Eldred, on the fifteenth day of Janu'ry, 1866, at Menasha, Wisconsin, entered, purchased, and paid for the west half of the southeast q'r & east half of southwest q'r of section four, (4,) township thirty-one (31)

north, of range fifteen, (15,) containing one hundred and sixty acres, located with M. B. land-warrant, and cancelled by the Commissioner of the Gen'l Land-Office Nov. 8th, 1866.

"JOSEPH KEYES, *Register.*"

69 "*Certificate of entry.*

"REGISTER'S OFFICE,
"*Menasha, Wis., January 25th,* 1872.

"I hereby certify that, from the books and records of the United States land-office at Menasha, Wisconsin, it appears that Mr. Anson Eldred, on the twenty-eight (28) day of December, 1865, at Menasha, Wisconsin, entered, purchased, and paid for the east half of section twelve, (12,) township thirty-one (31) north, of range fifteen, (15,) containing three hundred and twenty acres, located with agricultural-college scrip, and cancelled by the Commissioner of the Gen'l Land-Office Nov. 3rd, 1866.

"JOSEPH KEYES, *Register.*

"*Certificate of entry.*

"REGISTER'S OFFICE,
"*Menasha, Wis., January 25th,* 1872.

"I hereby certify that, the books and records of the United States land-office at Menasha, Wisconsin, it appears that Mr. Anson Eldred, on the fifteenth day of January, 1866, at Menasha, Wisconsin, entered, purchased, and paid for the east half of northwest q'r & the east half of southwest q'r of section twelve, (12,) township thirty-one (31) north, of range fifteen, (15,) containing one hundred and sixty acres, lo-
70 cated with M. B. land-warrant, and cancelled by the Commissioner of the Gen'l Land-Office Nov. 8th, 1866.

"JOSEPH KEYES, *Register.*"

And said plaintiff, to further maintain said issues on his part, produced and offered in evidence certified copies from the records of said Menasha land-office, certified to Joseph Keyes, register of said land-office, under the date of the 25th day of January, A. D. 1872, of the Government plats of townships numbers 31 and 32 north, of range 15 east, being the same townships in which the lands in question are located; to the reading of which in evidence the cou'sel for the defendant then and there objected upon the ground that they were immaterial; which objection the said circuit judge then and there overruled, and thereupon the said certified copies of the plats of said townships were received and given in evidence; that, among other things, it appears from the said certified copies of the plats of said townships, so as
71 aforesaid given in evidence, that each of the said entries made by said plaintiff of the lands in question in this action were duly noted and marked according to law upon said plats upon the portions thereof representing the lands so as aforesaid entered by said plaintiff; that upon the margin of the said certified copy of the plat of said township No. 31 appears a notation in the words and figures following, to wit:

"Even sections offered at public sale on the 2nd day of May, 1859, at $2.50 per acre, in pursuance of President's proclamation, bearing date the 24th day of December, 1858.

(Signed) "DAVID R. CURRAN, *Register.*"

That, upon the margin of the said certified copy of the plat of said township No. 32, appears a notation in the words and figures following, to wit:

"Even sections offered at public sale, on the 2nd day of May, 1859, at $2.50 per acre, in pursuance of the President's proclamation, bearing date the 24th day of December, 1858.

(Signed) "DAVID R. CURRAN, *Register.*"

And said plaintiff, to further maintain said issues on his part,
72 produced and offered in evidence a certificate of entry certified to by Joseph Keyes, register of the said Menasha land-office, under date of February 23rd, A. D. 1872, showing that one George McCook, on the 15th day of January, 1866, at said Menasha land-office, entered, and purchased, and paid for the northwest quarter and the northeast quarter of section 20, township 31 north, of range 15, containing 319.28 acres, located with agricultural-college scrips, and also produced and offered in evidence certified copies of two patents issued by the United States to the said George McCook, on the 20th day of November, 1866, conveying the lands so as aforesaid entered by him at said Menasha land-office; and also produced and offered in evidence a certain other certificate of entry, certified to by Joseph Keyes, register of said Menasha land office, under date of February 23rd, 1872, showing that one Diantha Farnsworth, on the 21st day of October, 1865, at said Menasha land-office, entered, purchased, and paid for the east half of the S. W. ¼ (quarter) of section number twenty-eight, and the
73 N. E. ¼ (quarter) of the N. W. ¼ (quarter) of section thirty-three, township thirty-one, north of range sixteen, containing 120 acres, located with military bounty-land warrant number 35585; and also produced and offered in evidence a certain other certificate of entry, certified to by Joseph Keyes, register of said Menasha land-office, under date of February 23rd, 1872, showing that the said Diantha Farnsworth, on the 23rd day of October, 1865, at said Menasha land-office, entered, purchased, and paid for the S. E. ¼ (quarter) of the S. W. ¼ (quarter,) the S. ½ of the S. E. ¼ (quarter,) and the N. E. ¼ (quarter) of the S. E. ¼ (quarter) of section thirty-two, township thirty-on' north, of range sixteen, containing 160 acres, located with military bounty-land warrant number 45949;

Objected to in bill.

and also produced and offered in evidence certified copies of two patents, issued by the United States to the said Diantha Farnsworth, on 1st day of June, 1866, conveying the lands so as aforesaid entered by her at said Menasha land-office; that said certificates of entry and said patents were offered in evidence, for the pur-
74 pose of showing that lands, which were in the same condition and situated as the lands in this question in this action, by being within the six-mile limits of said land-grants, as the said line of railroad was originally located, and falling without the six-mile limits of said land-grant as said line of railroad was lastly located, were sold by the Government at private entry at said Menasha land-office at or about the time said plaintiff made his said entries of the lands in question; and that afterwards the Government ratified and confirmed said entries by issuing patents for said lands, and thereby showing that the rule which the Government applied to said entries made by said plaintiff in can-

It is not proper to the argument. These objections or grounds of objections were stated. Disallowed.

celling them was not the uniform rule applied by the Government to all lands in like situation and condition as the lands in question in this action. That the counsel for said defendant then and there objected to the said certificates of entry and said patents so offered by said plaintiff, being re-

ceived and read in evidence, upon the ground that they were irrelevant and immaterial; which objection the said circuit judge then and
75 there sustained, to which ruling and decision of said circuit judge the said plaintiff, by his counsel, then and there excepted.

And, thereupon, the plaintiff rested.

And said defendant, to maintain said issues on his part, produced and offered in evidence, the proclamation of Andrew Johnson, President of the United States of America, bearing date the 14th day of June, 1866, and numbered 710, to which the counsel for plaintiff then and there objected for that it was irrelevant and immaterial; and further that it was not admissible under the allegations of defendant's answer; which objections the said circuit judge then and there overruled, and to which ruling and decision the counsel for plaintiff then and there excepted; thereupon said proclamation was read in evidence as follows, to wit:

"By the President of the United States:

"In pursuance of law, I, Andrew Johnson, President of the United States of America, do hereby declare and make known that public sales will be held at the under-mentioned land-offices, in the State of Wisconsin, at the periods hereinafter designated, to wit:" (Here
76 follows a list of land-sales at several of the land-offices in said State, and then comes the following:) "at the land-office at Menasha, commencing on Monday, the fifteenth day of October next, for the disposal of the land heretofore unoffered, situated in the following townships and parts of townships, viz:

"North of base-line and east fourth principal meridian." (Here follows a description of certain lands, and then comes the following-described lands:

"Sections 2, 4, 6, 8, 10, 12, 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36, in townships 31, 32, 33, 34, 35, and 36; and all townships 37, 38, 39, and 40; and lot 1, section 19; and lot 1, section 23; and lots 1 and 2, section 24; and fractional sections 25, 26, 27, 30, 31, 32, 33, 34, and sections 35 and 36, in township 41; all in range 15." (Here follows a description of other lands, and also the designation of the sales at other land-offices, and then comes the following:

"Lands appropriated by law for the use of schools, Indian, military, and other purposes, will be excluded from the sales.

"The tracts along the lines of the railroad will be sold subject
77 to the right of way granted by the act of the 4th August, 1852, for said railroads, and the particular tracts cut by the routes will be sold as containing the quantities, respectively, shown on the official plats, without deduction.

"The offering of the above lands will be commenced on the days appointed, and will proceed in the order in which they are advertised until the whole shall have been offered, and the sales thus closed; but no sales shall be kept open longer than two weeks, and no private entry of any of the lands will be admitted until after the expiration of the two weeks.

"Given under my hand, at the city of Washington, this 14th day of June, anno Domini one thousand eight hundred and sixty-six.

"ANDREW JOHNSON.

"By the President:

"J. M. EDMUNDS,

"*Commissioner of the General Land-Office.*"

And said defendant, to further maintain said issues on his part, produced and offered in evidence what purported to be certified copies of certain of the records of the General Land-Office in the Department o
the Interior of the United States of America, having the cer-
78 ficate of J. S. Wilson, Commissioner of the General Land-Office, dated December 19th, 1870, annexed; to the reading of which in evidence, the counsel for said plaintiff then and there objected, for that the certificate annexed to said copies was not sufficient to entitle them to be read in evidence, and for that the correspondence between different officers of the Government contained in said copies of said records was not competent evidence against said plaintiff, and for that the copies offered did not contain a complete record of the matters therein referred to; and also, for that the evidence offered was irrelevant and immaterial: which said objections the said circuit judge then and there overruled, and to which said ruling and decision the counsel for plaintiff then and there excepted; and thereupon the said copies of said records were read in evidence, as follows, to wit:

79 DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *December 19th*, 1870.

I, Joseph S. Wilson, Commissioner of the General Land-Office, do hereby certify that the annexed papers are true and literal exemplifications from the records of this Office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this Office to be affixed, at the city of Washington, on the day and year above written.

[U. S. G. L. O. SEAL.] J. S. WILSON,
Commissioner of the General Land-Office.

C.] DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *August 19th*, 1865.

REGISTER AND RECEIVER,
Menasha, Wis.

GENTLEMEN: The governor of Wisconsin having transmitted
80 to this office a map of the survey and location of the new line of route of the railroad, as provided for by the resolution of Congress, approved April 25th, 1862, vol. 12, p. 618, and now known as the Chicago and Northwestern, I enclose a diagram, showing the line of route as originally located with the 6 and 15 mile limits; also the new line of route from Appleton to near the mouth of the Menominee River, with the six-mile limits. And the following instructions are given with the approval of the Secretary of the Interior:

1st. The odd-numbered sections within the 6 and 15 mile limits of the original location of said road are still withheld from settlement, entry, or location.

2nd. The even-numbered sections within six miles of the original location and not within six miles of the new line of route, will be reduced to the ordinary minimum price of $1.25 per acre. And with the exceptions of such even sections as are within the limits of lands withdrawn Nov. 7, 1864, for a military wagon-road, will be subject to settlement and entry under the pre-emption and homestead laws, at $1.25 per acre.

3rd. The even sections within six miles of the new line of route
81 will be increased to double the ordinary minimum price of the public lands, and will be subject to settlement and entry under

the pre-emption and homestead laws at that price; except where inception rights may have occur'ed prior to the receipt of these instructions at your office. When the fact of such prior right is established by competent proof, the party will be allowed to pay for the land at the rate of $1.25 per acre.

4th. As all purchasers at $2.50 per acre within six miles of the original location and not brought within six miles of the new one, their heirs or assigns are authorized to exchange such locations to the new line, or enter without further payment at your office, an additional quantity of public land, subject to private entry, at $1.25 per acre, equal to the quantity originally entered at $2.50. You will give notice by public advertisement in a newspaper of general circulation in your district, that persons in this category will be allowed to exchange said locations or enter the additional quantity of land upon making application at
82 your office. Where the applicant is not the original purchaser, you will require evidence of his being the heir or assignee, which evidence will be transmitted to this Office with the new entry.

Any entries made under the resolution, will be returned to this Office in the register's and receiver's monthly returns, & the receiver's monthly and quarterly accounts, and a reference will be made on the papers in the case to the number of the original entry; also giving thereon the date of the resolution authorizing it.

The advertisement will be published once a week for four weeks, and the receiver, as acting disbursing agent will pay for the same, at the rates prescribed by this Office.

These instructions will take effect from and after their receipt at your office.

You will please acknowledge the date of receipt.

Very respectfully your ob'd't serv't,

J. M. EDMUNDS,
Commissioner.

83 B.] DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *November 3d*, 1866.

REGISTER AND RECEIVER,
Menasha, Wis.

GENTLEMEN: I enclose an abstract of entries and locations made at your office by Anson Eldred, with cash, agricultural-college scrip and warrants upon lands which formerly fell within the limits of the Chicago and Northwestern Railroad, and were held at $2.50 per acre.

In my letter to you of the 19th August, 1865, giving instruction to the lands falling without the new limits of the road and which had been embraced in the old limits, you were directed to allow the entry of even-numbered sections within six miles of the original location and not within 6 miles of the new line of route, under the pre-emption and homestead act, at $1.25 per acre. No private entry of these lands could of course be made until the same had been offered for sale at the ordinary minimum price.

84 Enclosed entries and locations therefor are illegal, and I have caused the same to be cancelled. You will note the cancellation on your records referring to this letter.

Very respectfully,

JOS. S. WILSON,
Commissioner.

NOTE.—The scrip is herewith returned to be delivered to the party on surrender of the duplicate certificates of location. The warrants will be returned in another communication.

J. S. WILSON,
Commissioner.

List of illegal entries and locations made by Anson Eldred, and cancelled by accompanying letter of November 3rd, 1866.

	S.	T.	R.	
N. E. ¼ N. E. ¼	14	31	15	Certif. 26740.
S. W. ¼ N. W. ¼	30	32	16	" 26741.
E. ½ N. W. ¼	4	31	15	W't 39887. Act 1855.
W. ½ N. E. ¼				
S. ½ N. E. ¼	18	31	16	W't 104400. " "
S. ½ N. W. ¼				
E. ½ N. W. ¼	12	31	15	W't 93683. "
E. ½ S. W. ¼				
85 E. ½ S. W. ¼	4	31	15	W't 105069. Act 1855.
W. ½ S. E. ¼				
W. ½ S. E. ¼				
N. E. ¼ S. W. ¼	34	32	15	W't 104145. "
S. E. ¼ N. W. ¼				
N. E. ¼ S. W. ¼				
W. ½ S. E. ¼	14	31	15	W't 104382.
S. W. ¼ N. E. ¼				
N. E. ¼	26	32	15	A. coll. scrip 366, Conn.
S. E. ¼	12	31	15	" 367, "
S. E. ¼	26	32	15	" 365, "
S. W. ¼	26	32	15	" 370, "
N. E. ¼	34	32	15	" 360, "
N. E. ¼	36	32	15	" 372, "
S. E. ¼	36	32	15	" 363, "
S. W. ¼	36	32	15	" 362, "
N. W. ¼	26	32	15	" 369, "
N. E. ¼	12	31	15	" 364, "
N. W. ¼	14	31	15	" 368, "
S. E. ¼	30	32	16	" 194, West Va.
S. W. ¼	30	32	16	" 195, "
S. E. ¼	20	32	15	" 385, Conn.
S. W. ¼	20	32	15	" 380, "
N. W. ¼	28	32	15	" 386, "

86 GENERAL LAND-OFFICE, *November 8th*, 1866.

GENTLEMEN: The following locations made at your office by Anson Eldred, of Milwaukee County, Wisconsin, with bounty-land warrants issued under act of March, 1855, have been cancelled for the reason that the lands so located were, prior thereto, withdrawn from market, and not subsequently restored, as stated in my letter to you dated November 5th, 1866, to wit: Dec. 28th, 1865, warrants Nos. 104382, for 160 acres, R. & R; No. 2937, on the N. E. ¼ of S. W. ¼, W. ½ of S. E. ¼, and S. W. ¼ of N. E. ¼, sec. 14, T. 31, R. 15; No. 104145, for 160 acres, R. & R., No. 2938, on the N. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, and S. E. ¼ of N. W. ¼, sec. 34, T. 32, R. 15. January 15th, 1866, warrants No. 105067, for 160 acres, R. & R., No. 2941, on the E. ½ of S. W. ¼ and W. ½ of S. E. ¼, sec. 4, T. 31, R. 15; No. 93683, for 160 acres, R. & R., 2942, on the E. ½ of N. W. ¼ and E. ½ of S. W. ¼, sec. 12, T. 31, R. 15; No. 410061, for 80 acres, R. & R; No. 2943, on the N. ½ of N. E. ¼, sec. 30, T. 32, R. 15; No. 104400, for 160 acres, R. & R., 2944, on S. ½ of N. E. ¼ & S. ½ of N. W. ¼, sec. 18, T. 31, R. 16. And on March 9th, 1866, No. 39887, for 160 acres, R. & R; No. 2971, on the E. ½ of the N. W. ¼ and W. ½ of N. E. ¼, sec. 4, T. 31, R. 15.

87 The location made with warrant No. 41061, for 80 acres, above mentioned and not referred to in said letter of November 5th, is in the same condition.

The locator, Anson Eldred, having filed in this Office the outstanding duplicate certificate of location, said warrants above-described, seven in number, have been this day forwarded to him with a sufficient notice of cancellation. You will make the proper notations in each case on your plat and tract books, referring to this letter by its date.

Very respectfully, your ob'd't serv't.

JOS. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Menasha, Wis.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFCE, *November 9th*, 1866.

GENTLEMEN: The location made at your office Dec. 28th, 1865, by Anson Eldred, on the N. W. ¼ N. E. ¼ sec. 14, T, 31, R. 15, has
88 been cancelled, upon the ground that the tract was not subject to private entry, and the warrant located, No. 86113, for 40 acres, act of 1850, has been forwarded to the locator, at Milwaukee, Wis., he having surrendered the duplicate of location.

I am, very respectfully, your ob'd't serv't,

JOS. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Menasha, Wisconsin.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *April 11th*, 1867.

Hon. O. H. BROWNING,
Secretary of the Interior:

SIR: I have the honor to submit herewith the papers in the case of Anson Eldred, entries made at Menasha, Wis., with the appeal (*a*) James S. Brown, att'y for Mr. Eldred, from the decision of this Office, (B), bearing date Nov. 3rd, 1866, cancelling Mr. Eldred's entries.
89 These lands were within the 6-mile limits of the Chicago and Northwestern Railroad, act June 3rd, 1856, and were offered for sale at $2.50 per acre. Subsequently, by act of 25th April, 1862, (Stat., vol. 12, page 619, (Congress authorized a change of route of said road, and directed by the 4th section that the even sections of public lands reserved to the United States by the aforesaid act of June 3d, 1856, along the originally located route of railroad north of the said town of Appleton, and along which no railroad has been constructed, shall hereafter be sold at one dollar and twenty five cents per acre.

In virtue of that provision, this office issued instructions to the local officers at Menasha, under date of 19th August, 1855, (C), directing that the even-numbered sections, within six miles of the original location, and not within six miles of the new line of route, will be reduced to the ordinary minimum price of $1.25 per acre, and with the exception of such even-numbered sections as are within the limits of lands withdrawn Nov. 7th, 1864, for a military wagon-road, will be subject
90 to settlement, under the pre-emption and homestead laws, at $1.25 per acre.

This proceeding was based upon the established practice of the office, requiring when lands had been offered and their condition subsequently changed, either in price or by cancellation of entry, the same shall be restored to market after proper notice, so as to afford competition before being subject to ordinary private sale or location.

Subsequent to these instructions, Mr. Eldred applied at the land-office for, and was allowed to enter at ordinary private entry, certain tracts of the above class of lands. Upon the entries being reported to this Office, the locations were cancelled (3d Nov., 1866,) for the reason that the lands had not been first offered at public sale at the reduced price, and hence not regarded as subject to ordinary private entry.

The argument of Mr. Brown is based upon the assumption that the 4th section of the act 25th April, 1862, so fixed the price at $1.25 per acre as to withdraw the land from such offering, and to subject it to
that rate, neither more nor less; and that the defendant cannot
91 therefore place the lands in market at public sale, as such action would require public offering and sale to the highest bidder. Upon this point he appeals from our decision to the Secretary of the Interior, which is accordingly submitted.

It is not deemed necessary to consider at this time the pre-emption claims asserted to a portion of these tracts claimed by Eldred since the cancellation of his entries; for should the Secretary's decision sustain Mr. Eldred's view of the law, our action must necessarily be reversed and his entries re-instated; whilst, should the decision of this Office be sustained, the entries will remain cancelled, and the pre-emptors would be dealt with according to their merits, as shown be the Secretary in the several cases.

I am, sir, very respectfully,

JOS. S. WILSON,
Commissioner.

92 DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 18th, 1867.

SIR: I have received your letter of the 11th inst., transmitting the papers, on the appeal of Anson Eldred from your decision of the 3rd November last, cancelling certain entries of his made at the Menasha, Wisconsin, land-office. An examination of the papers and of the briefs of the counsel in the case has satisfied me of the correctness of your order of cancellation. Your action is therefor' affirmed, and the papers are herewith returned.

Very respectfully, your ob'd't serv't,

O. H. BROWNING,
Secretary.

Hon. JOSEPH S. WILSON,
Commissioner of the Gen. Land-Office.

And said defendant, to further maintain said issues on his part, produced and offered in evidence, what purported to be certified copies of
certain of the records of the United States land-office at Mena-
93 sha, in the State of Wisconsin, having the certificate of Joseph Keyes, register of said land-office, dated July 27th, 1870, annexed; to the reading of which in evidence the counsel for said plaintiff then and there objected, for that the certificate annexed to said copies was not sufficient to entitle them to be read in evidence; and for that the correspondence between different officers of the Government contained in said copies of said records was not competent evidence against said plaintiff; and for that the copies offered did not contain a complete record of the matters therein referred to; and also, for that the evidence offered was irrelevant and immaterial: which said objections the said circuit judge then and there overruled; and to which said ruling and decision the

counsel for plaintiff then and there excepted; and thereupon the said copies of said records were read in evidence, as follows, to wit:

94 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
November 3rd, 1866.

REGISTER AND RECEIVER, *Menasha*.

GENTLEMEN: I enclose an abstract of entries and locations made at your office by Anson Eldred with cash, agricultural college scrip, and warrants upon lands which formerly fell within the limits of the Chicago and Northwestern Railroad, and were held at $2.50 per acre.

In my letter to you of 19th August, 1865, giving instructions relative to the lands falling without the new limits of the road and which had been embraced in the old limits, you were directed to allow the entry of such even-numbered sections within six miles of the original location, and not within six miles of the new line of route, under the pre-emption and homestead act, at $1.25 per acre. No private entry of these lands could, of course, be made until the same had been offered at sale at ordinary minimum price. The enclosed entries and locations,
95 therefore, are illegal, and I caused the same to be cancelled.

You will note the cancellations on your record, referring to this letter.

Very respectfully,

JOS. S. WILSON,
Commissioner.

NOTE.—The scrip is herewith returned to be delivered to the party on surrender of the duplicate certificates of location.

J. S. WILSON,
Commissioner.

List of illegal entries and locations made by Anson Eldred, and cancelled by accompanying letter of Nov. 3d, 1866.

E. ½	N. W. ¼,	sec.	4,	T.	31,	R.	15,	80 acres.
E. ½ of S. W. ¼,		"	"	"	"	"	"	"
E. ½ of N. W. ¼,		"	12,	"	"	"	"	"
E. ½ of S. W. ¼,		"	"	"	"	"	"	"
S. E. ¼		"	"	"	"	"	160	"
S. E. ¼		"	26	"	32	"	15	"
N. E. ¼		"	"	"	"	"	"	"
N. W. ¼		"	"	"	"	"	"	"

And other lands.

96 GENERAL LAND OFFICE, *November 8th*, 1866.

GENTLEMEN: The following locations made at your office by Anson Eldred, of Milwaukee County, Wisconsin, with bounty-land warrants, issued under the act of March 3d, 1865, have been cancelled, for the reason that the lands so located were, prior thereto, withdrawn from market, and not subsequently restored, as stated in my letter to you, dated November 5th, 1866, to wit: Dec. 28th, 1865, warrants No. 104382, for 160 acres, R. and R., No. 2937, on the N. E. ¼ of S. W. ¼, W. ½ of S. E. ¼, and S. W. ¼ of N. E. ½, sec. 14, T. 31, R. 15; No. 104145, for 160 acres, R. and R., No. 2938, on N. ½ of S. E. ¼, N. E. ¼ of S. W. ¼, and S. E. ¼ of N. W. ¼, sec. 34, T. 32, R. 15. January 15th, 1866, war-

rants No. 105067, for 160 acres, R. and R., No. 2941, on E. ½ of S. W. ¼ and W. ½ of S. E. ¼, sec 4, T. 31, R. 15; No. 93683, for 160 acres, R. and R., No. 2942, on the E. ½ of N. W. ¼ and E. ½ S. W. ¼, sec. 12, T. 31, R. 15; No. 41061, for 80 acres, R. & R., No. 2943, on the N. ½ of N. E. ¼, sec. 30, T. 32, R. 15; No. 104400, for 160 acres, R. & R., No. 2944, on the S. ½ of N. E. ¼ and S. ½ of N. W. ¼, sec. 18, T. 31,
97 R. 16. And on March 9th, 1866, No. 39887, for 160 acres, R. & R., No. 2971, on the E. ½ of N. W. ¼ and W. ½ of N. E. ¼, sec. 4, T. 31, R. 15.

The location made with warrant No. 41061, for 80 acres, above mentioned, and not referred to in said letter of Nov. 5, is in the same condition.

The locator, Anson Eldred, having filed in this office the outstanding duplicate certificates of location and warrants above described, seven in number, have been this day forwarded to him with a sufficient notice of said cancellations.

You will make the proper notations in each one of your plat and tract books, referring to this letter by its date.

Very respectfully, your ob'd't servant,

J. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Menasha, Wisconsin.

98 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *November 8th*, 1866.

REGISTER AND RECEIVER,
Menasha, Wis.

GENTLEMEN: Referring to my letter of 3rd inst., cancelling certain entries and locations made by Anson Eldred, I have to state that I have this day cancelled cash certificate No. 26756 for S. E. ¼ of S. E. ¼, section 4, T. 31, R. 15; certificate 26757 for N. W. ¼ of N. W. ¼, sec. 22, T. 31, R. 15; and certificate 26758 for N. E. ¼ of S. E. ¼, sec. 20, T. 31, R. 15, made by said Eldred January 15th, 1866, for the same reason as contained in said letter. Be please' to note the cancellation on your records, referring to this letter.

Very respectfully,

J. S. WILSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *November 9th*, 1866.

GENTLEMEN: The location made at your office Dec. 28th, 1865,
99 by Anson Eldred, on the N. W. ¼ of N. E. ¼, sec 14, T. 31, R. 15, has been cancelled, upon the ground that the tract was not subject to private entry, and the warrant located, No. 86113, for 40 acres, act of 1850, has been forwarded to the locator at Milwaukee, Wis., he having surrendered the duplicate certificate of location.

I am, very respectfully, your ob'd't servant,

J. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Menasha, Wis.

STATE OF WISCONSIN,
County of Winnebago, ss:

I do hereby certify that I have carefully compared the annexed copies of letters of instructions from the Commissioner of the General Land-Office, with the originals on file in my office at Menasha, Wisconsin, and that they are true copies of said originals.

Dated this 27th day of July, 1870.

JOSEPH KEYES, *Register.*

100 DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *October 23rd*, 1869.

REGISTER AND RECEIVER,
Menasha, Wisconsin.

GENTLEMEN: I append hereto a list of lands which have been offered at public sale, but subsequently withdrawn from market by reason of cancelled entries, &c. You are now directed to give notice, by publication in the newspaper having the largest circulation in the neighborhood, that, upon a day to be fixed by you, and not less than thirty days from date of notice, these tracts will again be subject to private entry.

This notice the receiver as disbursing agent will pay for and enter in his proper account, sending as vouchers a copy of notice, with publisher's certificate of publication, and his receipt for payment. You will also, immediately upon publication, send a copy of the paper containing the notice, that we may be made aware of the date of the restoration.

101 The following is the list:

W. ½ of N. E. ¼,	sec. 4,	T. 31,	R. 15.	S. W. ¼,	sec. 20, T. 32, R. 15.
E. ½ N. W. ¼,	sec. 4,	T. 31,	R. 15.	S. E. ¼,	" 20, " 32, " 15.
E. ½ S. W. ¼,	" 4,	" 31,	" 15.	N. E. ¼,	" 26, " 32, " 15.
N. E. ¼	" 12,	" 31,	" 15.	N. W. ¼,	" 26, " 32, " 15.
W. ½ S. E. ¼ & S. E. S. E.,	sec. 4,	T. 31,	R. 15.	S. W. ¼,	" 26, " 32, " 15.
E. ½ N. W. ¼,	sec. 12,	T. 31,	R. 15.	S. E. ¼,	" 26, " 32, " 15.
E. ½ S. W. ¼,	" 12,	" 31,	" 15,	N. W. ¼,	" 28, " 32, " 15.
S. E. ¼	" 12,	" 31,	" 15.	N. ½ N. E. ¼,	" 30, " 32, " 15.
N. ½ N. E. ¼,	" 14,	" 31,	" 15.	N. E. ¼,	" 34, " 32, " 15.
S. W. ¼,	" 14,	" 31,	" 15.	S. E. ¼ N. W. ¼,	" 34, " 32, " 15.
N. W. ¼,	" 14,	" 31,	" 15.	N. E. ¼ S. W. ¼,	" 34, " 32, " 15.
N. E. ¼ of S. W. ¼,	" 14,	" 31,	" 15.	S. E. ¼ S. W. ¼,	" 34, " 32, " 15.
W. ½ S. E. ¼,	" 14,	" 31,	" 15.	N. ½ S. E. ¼,	" 34, " 32, " 15.
N. W. ¼ N. W. ¼,	" 22,	" 31,	" 15.	S. W. ¼ N. W. ¼,	" 30, " 32, " 16.
S. ½ N. E. ¼,	" 18,	" 31,	" 16.	S. W. ¼,	" 30, " 32, " 16.
S. ½ N. W. ¼,	" 18,	" 31,	" 16.	S. E. ¼,	" 30. " 32, " 16.
N. E. ¼ S. E. ¼,	sec. 20,	T. 31,	R. 16.		

Where two or more parties apply for the same tract the land should be offered to the highest bidder.

Very respectfully.

J. S. WILSON,
Commissioner.

Public notice.

102 In pursuance of instructions from the Commissioner of the General Land-Office, notice is hereby given that the following described lands, which have been withdrawn from market, by reason of cancelled entries, will be restored and subject to private entry on and after the 17th day of December, 1869, to wit:

W. ½ N. E. ¼, sec. 4, T. 31, R. 15.
E. ½ S. W. ¼, " 4, " 31, " 15.
N. E. ¼, " 12, " 31, " 15.
E. ½ S. W. ¼, " 12, " 31, " 15.
N. ½ N. E. ¼, " 14, " 31, " 15.
N. W. ¼, " 14, " 31, " 15.
W. ½ S. E. ¼, " 14, " 31, " 15.
S. ½ N. E. ¼, " 18, " 31, " 16.
N. E. ½ S. E. ¼, " 20, " 31, " 16.
S. E. ¼, " 20, " 32, " 15.
N. W. ¼, " 26, " 32, " 15.
S. E. ¼, " 26, " 32, " 15.
N. ½ N. E ¼, " 30, " 32, " 15.
S. E. ¼ N. W. ¼, " 34, " 32, " 15.
N. ½ S. E. ¼, " 34, " 32, " 15.
S. W. ¼, " 30, " 32, " 16.
E. ½ N. W. ¼, sec. 4, T. 31, R. 15.

W. ½ N. E. ¼ & S. E. ¼ S. E. ¼, sec. 4, T. 31, R. 15.
E. ½ N. W. ¼ sec. 12, T. 31, R. 15.
S. E. ¼ " 12, " 31, " 15.
S. W. ¼ N. E. ¼ " 14, " 31, " 15.
N. E. ¼ S. W. ¼ " 14, " 31, " 15.
N. W. ¼ N. W. ¼ " 22, " 31, " 15.
S. ½ N. W. ¼ " 18, " 31, " 16.
S. W. ¼ " 20, " 32, " 15.
N. E. ¼ " 26, " 32, " 15,
S. W. ¼ " 26, " 22, " 15.
N. W. ¼ " 28, " 32, " 15.
N. E. ¼ " 34, " 32, " 15.
N. E. ¼ S. W. ¼ " 34, " 32, " 16.
S. W. ¼ N. W. ¼ " 30, " 32, " 16.
S. E. ¼ " 30, " 32, " 16.

JOSEPH KEYES, *Register.*
NORMAN THATCHER, *Receiver.*

103 STATE OF WISCONSIN,
Winnebago County, ss:

De Witt S. Johnson, being duly sworn, says he is printer of the Island City Times, a weekly newspaper, publishe' in Neenah and Menasha, in said county, and the notice, a copy of which is hereunto annexed, was published in said paper once a week, for four weeks in succession, commencing the 13th day of Nov., A. D. 1869.

D. S. JOHNSON, *Printer.*

Subscribed and sworn to before this 31st day of December, 1869.
JOHN W. STONE,
Notary Public.

STATE OF WISCONSIN,
Winnebago County, ss:

I hereby certify that I have carefully compared the annexed copy of a notice of publication of restoration of lands to market at private entry, at the land-office in Menasha, Wisconsin, with the original on file in my office, at Menash' aforesaid, and that it is a true copy of said original.

Dated this 27th day of July, A. D. 1870.

JOSEPH KEYES, *Register.*

104 And said defendant, to further maintain said issues on his part, produced and offered in evidence, what purported to be copies of certain of the records of the United States land-office at Menasha, in the State of Wisconsin, having the certificate of Joseph Keyes, register of said land-office, dated September 24th, 1870, annexed; to the reading of which in evidence the counsel for said plaintiff then and there objected, for that the certificates annexed to said copies was not sufficient to entitle them to be read in evidence; and for that the copies offered did not contain a complete records of the matters therein referred to; and also, that the evidence offered was irrelevant, incompetent, and immaterial; which said objections the said circuit judge then and there overruled; and to which said ruling and decision the counsel for plaintiff then and there excepted; and thereupon the said copies of said record were read in evidence as follows, to wit:

105 DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *November 3rd*, 1866.

REGISTER AND RECEIVER,
Menasha, Wis.

GENTLEMEN: I enclose an abstract of entries and locations made at your office by Anson Eldred, with cash, agricultural scrip, and warrants upon lands which formerly fell within the limits of the Chicago and Northwestern Railroad, and were held at $2.50 per acre.

In my letter to you, August 19th, 1865, giving instructions relative to the lands falling without the new limits of the road and which had been embraced in the old limits of the road, you are directed to allow the entry of such even-numbered sections within six miles of the original location, and not within six miles of the new line of route, under the pre-emption and homestead act, at $1.25 per acre. No private entry of these lands could, of course, be made until the same had been offered for sale at the ordinary minimum price.

106 The enclosed entries and locations therefor' are illegal, and I have caused the same to be cancelled. You will note the cancellation on your record, referring to this letter.

Very respectfully,

J. S. WILSON,
Commissioner.

NOTE.—The scrip is herewith returned to be delivered to the party on surrender of the duplicate certificate of location. The warrants will be returned in another communication.

JOS. S. WILSON, *Com.*

List of illegal entries and locations made by Anson Eldred and cancelled by accompanying letter of Nov. 3rd, 1866.

S. W. ¼, sec. 26, T. 32, R. 15.
S. E. ¼, sec. 20, " " " "
S. W. ¼, " " " " " "
N. W. ¼, " 14, " 31, " 15.
N. E. ¼ of N. E. ¼, sec. 14, T. 31, R. 15.
S. W ¼ of N. W. ¼, sec. 30, T. 32, R. 16.
N. W. ¼, sec. 28, T. 32, R. 15, and other tracts.

107 DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *November 9th*, 1866.

GENTLEMEN: The location made at your office Dec. 28th, 1865, by Anson Eldred, on N. W. ¼ of N. E. ¼ of sec. 14, T. 31, R. 15, has been cancelled upon the ground that the tract was not subject to private entry, and the warrant located, No. 86113, for 40 acres, act of 1850, has been forwarded to the locator at Milwaukee, Wis., he having surrendered the duplicate certificates of location.

I am, very respectfully, your ob'd't servant,

J. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Menasha, Wis.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *November 8th*, 1866.

REGISTER AND RECEIVER,
Menasha, Wis.

GENTLEMEN: Referring to my letter of the 3rd inst., cancelling
108 certain entries and locations made by Anson Eldred, I have to state that I have this day cancelled cash-certificate No. 26756, for S. E. ¼ of S. E. ¼, sec. 4, T. 31, R. 15; certificate 26757, for N. W. ¼ of N. W. ¼, sec. 22, T. 31, R. 15; and certificate 26758, for N. E. ¼ of S. E. ¼, sec. 20, T. 31, R. 16, made by Anson Eldred, January 15th, 1866, for the same reason as contained in said letters. Be pleased to note the cancellation on your records referring to this letter.

Very respectfully,

J. S. WILSON,
Commissioner.

GENERAL LAND-OFFICE, *November 8th*, 1866.

GENTLEMEN: The following locations, made at your office by Anson Eldred, of Milwaukee County, Wisconsin, with bounty land-warrants issued under the act of March 3d, 1855, have been cancelled, for the reason that the lands so located were, prior thereto, withdrawn from market and not subsequently returned, as stated in my letter to you dated November 5th, 1866, to wit: Dec. 28th, 1865, warrants No.
109 104382, for 16 acres, R. and R., No. 2937, on the N. E. ¼ of S. W. ¼, W. ½ of S. E. ¼, and S. W. ¼ of N. E. ¼, sec. 14, T. 31, R. 15; No. 104145, for 160 acres, R. & R., No. 2938, on the N. fr. of S. E. ¼, N. E. ¼ of S. W. ¼, and S. E. ¼ of N. W. ¼, sec. 34, T. 32, R. 15. January 15th, 1866, warrants No. 105067, for 160 acres, R. & R., No. 2941, on E. ½ of S. W. ¼ and W. ½ S. E. ¼, sec. 4, T. 31, R. 15; No. 93683, for 160 acres, R. & R., No. 2942, on the E. ½ N. W. ¼ and E. ½ S. W. ¼, sec. 12, T. 31, R. 15; No. 41061, for 80 acres, R. & R., No. 2943, on N. ½ of N. E. ¼, sec. 20, T. 32, R. 15; No. 104400, for 160 acres, R. & R., No. 2944, on the S. ½ of N. E. ¼ and S. ½ of N. W. ¼, sec. 18, T. 31, R. 16. And on March 9th, 1866, No. 39887, for 160 acres, R. & R., No. 2971, on the E. ½ of N. W. ¼ and W. ½ N. E. ¼, sec. 4, T. 3, R. 15.

The locations made with warrant No. 41061, for 80 acres, above-mentioned and not referred to in said letter of Nov. 5, is in the same condition.

The locator, Anson Eldred, having filed in this office the outstanding duplicate certificates of location, said warrants above-described, seven in number, have this day been forwarded to him, with a sufficient notice of said cancellations.

110 You will make the proper note at once, in each case, on your plat and tract-books, referring to this letter by its date.

Very respectfully, your ob'd't servant,

J. S. WILSON,
Commissioner.

REGISTER AND RECEIVER,
Menasha, Wis.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, *October 23d*, 1869.

REGISTER AND RECEIVER,
Menasha, Wis.

GENTLEMAN: I append hereto a list of lands which have been offered at public sale, but subsequently withdrawn from market by reason of

cancelled entries, &c. You are now directed to give notice, by publication in the weekly newspaper having the largest circulation in the neighborhood, that, upon a day to fixed by you and not less than thirty days from date of notice, these tracts will again be subject to private entry.

111 This notice, the receive', as disbursing-agent, will pay for and enter in his proper account, sending as vouchers a copy of notice, with publisher's certificate of publication and his receipt for payment; you will also, immediately upon publication. send a copy of the papers containing the notice, that we may be made aware of the date of restoration.

The following is the list:

S. W. ¼,	sec. 26, T. 32, R. 15.
S. E. ¼,	" 20, " 32, " 15.
S. W. ¼,	" 20, " 32, " 13.
N. W. ¼,	" 14, " 31, " 13.
N. E. ¼ of N. E. ¼,	sec. 14, T. 31, R. 13.
S. W. fr. of N. W. ¼,	" 30, " 32, " 16.
N. W. ¼,	" 28, " 32, " 15.

And other tracts.

Where two or more parties apply for the same tract the land should be offered to the highest bidder.

Very respectfully,

J. S. WILSON,
Commissioner.

STATE OF WISCONSIN,
County of Winnebago, ss:

I, Joseph Keyes, register of the land-office at Menasha, Wis.,
112 do hereby certify that I have carefully compared the foregoing copies of letters of instructions from the Commissioner of the General Land-Office with the original now on file in my office, and that they are correct copies of the originals on file in my office.

Dated this 24th day of September, 1870.

JOSEPH KEYES, *Register.*

And said defendant, to further maintain said issues on his part, produced and offered in evidence five patents issued by the United States on the 1st day of July, A. D. 1870, to said defendant, and purporting to convey to said defendant the lands in question in this action; to the reading of which in evidence the counsel for plaintiff then and there objected, which objection the said circuit judge then and there overruled, and to which said ruling and decision plaintiff's counsel then and there excepted; and thereupon said patents were received and read in evidence.

And said defendant, to further maintain said issues on his part,
113 was sworn as a witness on his own behalf, and testified as follows:

I am defendant. I know the lands in question. I purchased the lands in person. I made the entries myself.

Question by defendant's counsel. State whether you had any notice when you purchased these lands that Mr. Eldred had any claim to them.

(Objected to by plaintiff's counsel. Objection overruled and exception taken.)

Answer. I had not.

On cross-examination he testified as follows:

I was in person at land-office. It was, I think, the 17th or 18th day December, 1869. I was at land-office the day before the sale, and might have seen the public notice of the land-sale. (Here the witness was shown a printed notice, a copy of which appears in a former part of this bill of exceptions, headed "Public notice," and testified that he thought it was a copy of the notice he saw.)

And thereupon the defendant rested.

The above and foregoing is all of the evidence given upon said trial.

That afterwards, and at the April term, A. D. 1872, of the said
114 circuit court in and for said county of Dane, to wit, on the 3rd day of April, A. D. 1872, the said court rendered its decision in said action; and afterwards, and on the 17th day of said April, filed with the clerk of said court its finding or decision in writing, of which the following is a copy, to wit:

State of Wisconsin, circuit court for Dane County.

ANSON ELDRED, PLAINTIFF,
vs.
ANDREW SEXTON, DEFENDANT.

The issues of fact joined in this action came on to be heard before the Hon. Alva Stewart, circuit judge and judge of said county, (in vacation, and at chambers, pursuant to a stipulation and agreement made between the parties hereto, by their att'ys, in open court, by which it was stipulated and agreed that the same should be so tried, & should be decided in term-time, and in open court, with the same force and effect as
115 if the same had been tried before said court term-time;) and the said issues having been tried and submitted acordingly, and having been decided by said court in term-time in open court, to wit, at the April term of said court, A. D. 1872, on the third day of said month, and upon the evidence offered by the parties and received on said trial, and upon the arguments made thereon by the counsel for the respective parties, the court finds the following facts proved, that is to say: That, at the several times stated in said complaint, the said plaintiff applied to the register of the land-office in Menasha to enter by private entry the several tracts of land in said complaint described, and at the price and sum of one dollar and twenty-five cents per acre, and was permitted by said register to enter the land, paying therefor as alleged in said complaint, and received certificates of such entries in the usual form; that, afterwards, & on or about the 3d day of November, A. D. 1866, the said several entries having been reported to the Commissioner at the General Land-Office of the United States at Washington, the said Commissioner set aside and cancelled said several entries, upon the
116 ground & for the reason that the said several tracts of land were not, at the time said entries were allowed to be made, subject to private entry at the sum of one dollar & twenty-five cents per acre; that thereafter the said plaintiff appealed from the action of the Commissioner of the General Land-Office in cancelling said entries to the Secretary of the Interior, who, after hearing said plaintiff upon said appeal, affirmed the action of the Commissioner of the General Land-Office in the premises.

The said lands were all within the six-mile limit of the land-grant mentioned in the complaint, according to the first location of the route of said road, as it was located from Fond du Lac northerly to the State

line, by the Chicago and Northwestern Railway Company, pursuant to said grant, prior to 1849.

That the public survey of said lands was completed at or about the time of the location of the route of said road as aforesaid, and
117 before said entries by plaintiff, and the lands within the limits of said grant being the odd-numbered sections, (act of Congress, June 3rd, 1856,) were granted by the legislature of Wisconsin to the said Chicago and Northwestern Railway Company, and the even-numbered sections were reserved. That the lands described in the plaintiff's complaint were never offered for sale at any land-sale at the minimum price of the public lands of one dollar and twenty-five cents per acre until a long time after the alleged entries of said plaintiff were made, and not until a short time before the defendant made the entries mentioned in said complaint, upon which patents were issued to him in the usual form, July 1st, A. D. 1870.

By the proclamation of President Buchanan, of Dec. 24, 1858, the even-numbered sections within the limits of said grant, including the lands described in the complaint, were offered at public sale, on the 2nd day of May, 1859, as far north as township thirty-three, and no further, a distance of about fifty miles south of the State line and terminus
118 of the route of said road, and said lands lie south of township No. thirty-three, at the price of two dollars and fifty cents per acre; and said land remained unsold at the end of said sale, and no proof has been offered to show that any of the lands north of township thirty-three had been, prior to said plaintiff's entry, offered for sale pursuant to the proclamation of the President, at any price or rate whatever.

That, afterwards, pursuant to the proclamation of President Johnson, June 14, 1866, and orders from the Commissioner of the General Land-Office, the land described in said complaint, offered at public sale at the price of one dollar and twenty-five cents per acre, as being cancelled entries, and remaining unsold at the conclusion of such sale, the same were entered at private entry by the defendant, on or about the 18th day of December, A. D. 1869, as alleged in his answer, at the price of one dollar and twenty-five cents per acre.

That, at the time of making such entries, the defendant knew
119 that prior entries of said lands had been cancelled, and the records of the land-office at Menasha, where he made said entries, showed the facts in relation to the making and cancellation of the entries under which the plaintiff claims; that before the plaintiff made his entries the route of the road of said railway company was so changed and relocated, pursuant to the resolution of Congress, of April 23rd, 1862, that the lands in question were left and situate more than six miles from the line of the newly-located route.

That the plaintiff did not receive back the price and consideration paid by him upon making said entries, as alleged in said defendant's answer.

As conclusions of law, I find that the several tracts of land described in the plaintiff's complaint, were not subject to private entry at the time he made his said entries; that he acquired by said entries no right, title, or interest, whatever, in or to said lands, or any part thereof, and that judgment should be entered herein denying the relief prayed for by said plaintiff, and adjudging that he take nothing by his said
120 complaint, and that the defendant recover against the plaintiff

his costs and disbursements in this action; and judgment is ordered accordingly.

Dated April 11th, A. D. 1872.

By the court:

ALVA STEWART, *Judge.*

That, afterwards, on the 24th day of April A. D. 1872, said plaintiff filed with the clerk of said court, his exceptions to the said finding or decision of said court, of which the following is a copy, to wit:

Circuit court, Dane County.

ANSON ELDRED
vs.
ANDREW SEXTON.

And now comes the above-named plaintiff, by John W. & A. L. Cary, his attorneys, and excepts to the finding and decision of the court in the above-entitled action, as follows, to wit:

1st. Said plaintiff excepts to so much and such part of said finding and decision as is in the words and figures following, to wit:

121 "That afterwards, and on or about the 3rd day of December, A. D. 1866, the said several entries having been reported to the Commissioner of the General Land-Office of the United States at Washington, the said Commissioner set aside and cancelled said several entries, upon the ground and for the reason that the said several tracts of land were not, at the time said entries were allowed to be made, subject to private entry at the sum of one dollar and twenty-five cents per acre; that thereafter the said plaintiff appealed from the action of the Commissioner of the General Land-Office in cancelling said entries, to the Secretary of the Interior, who, after hearing said plaintiff upon said appeal, affirmed the action of the Commissioner of the General Land-Office in the premises."

2nd. Said plaintiff further excepts to so much and such part of said finding and decision as is in the words and figures following, to wit:

"That the lands described in the plaintiff's complaint were never offered for sale at any land-sale at the minimum price of the pub-

122 lic lands, at one dollar and twenty-five cents per acre, until a long time after the alleged entries of said plaintiff were made, and not until a short time before the defendant made the entries mentioned in said complaint, upon which patents were issued to him in the usual form, July 1st, A. D. 1870."

3d. Said plaintiff further excepts to that part of said finding and decision which finds, as a fact, that the even-numbered sections within the limits of said land-grant, and lying north of the township number thirty-three were not offered at public sale at two dollars and fifty cents per acre, on the 2nd day of May, 1859, by the proclamation of President Buchanan of Dec. 24, 1858.

4th. Said plaintiff further excepts to so much and such part of said finding and decision as is in the words and figures following to wit:

"And no proof has been offered to show that any of the lands north of township thirty-three had been, prior to said plaintiff's entry, offered for sale pursuant to the proclamation of the President, at any rate or price whatever."

123 5th. Said plaintiff further excepts to so much and such part of said finding and decision, as is in the words and figures following, to wit:

"That, afterwards, pursuant to the proclamation of President Johnson, June 14th, 1866, and orders from the Commissioner of the General Land-Office, the lands described in said complaint, were offered, at public sale, at the price of one dollar and twenty-five cents per acre, as being cancelled entries, and remaining unsold. At the conclusion of such sale the same were entered, at private entry, by the defendant, on or about the 18th day of Dec., A. D. 1869, as alleged in his answer, at the price of one dollar & twenty-five cents per acre."

6th. Said plaintiff further excepts to so much and such part of said finding and decision, which finds, as conclusions of law, the following, to wit: That the several tracts of land described in the plaintiff's complaint, were not subject to private entry at the time he made his said entries; that he acquired, by said entries, no right, title, or in-
124 terest whatever in or to said lands or any part thereof; and that judgment should be entered herein denying the relief prayed for by said plaintiff, and adjudging that he take nothing by his said complaint, and that the defendant recover against the plaintiff his costs and disbursements in this action; and judgment is ordered according."

JOHN W. & A. L. CARY,
Pl'ff's Att'ys.

And because none of the foregoing matters appear of record in said action, the said circuit judge, at the request of said plaintiff, has signed and sealed this bill of exceptions, the 30th day of May, A. D. 1872.

ALVA STEWART, *Judge.* [SEAL.]

125 State of Wisconsin, circuit court of Dane County.

DANE COUNTY, *ss:*

I, L. D. Frost, clerk of said court, do hereby certify that the foregoing and annexed paper-writings are the original papers on change of venue from Oconto County circuit court, answer, amended answer, finding, judgment, exceptions to finding, notice of appeal, and bill of exceptions, which have been filed in my office, in the action wherein Anson Eldred is plaintiff, and Andrew Sexton is defendant, and that the same are hereby transmitted to the judges of supreme court of the State of Wisconsin, in pursuance of said notice of appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the clerk's office, in the city of Madison, this 4th day of June, A. D. 1872.

[SEAL.] L. D. FROST, *Clerk.*

126 And afterwards, to wit, at the term aforesaid, on the 3rd day of the term, to wit, on the 6th day of June, A. D. 1872, the following proceedings were had in said cause, that is to say:

ANSON ELDRED, APPELLANT,
vs.
ANDREW SEXTON, RESPONDENT. } Dane circuit court.

And now, at this day, come the parties herein by their attorneys, and the argument of this cause having been commenced by Messrs. J. W. & A. L. Cary, for said appellant, and Messrs. Gregory and Pinney for said respondent, and there not being now sufficient time to complete the same, it is continued for further argument.

And afterwards, to wit, on the 4th day of said term, to wit, on the 7th day of June, A. D. 1872, the following further proceedings were had in said cause, that is to say:

127 ANSON ELDRED, APPELLANT, *vs.* ANDREW SEXTON, RESPONDENT. } Dane circuit court.

And now, at this day, came the parties herein, by their attorneys, and the argument of this cause having been resumed and completed, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

And afterwards, to wit, at the term aforesaid, on the 9th day of July, A. D. 1872, the following decision and judgment was entered in said cause, that is to say:

ANSON ELDRED, APPELLANT, *vs.* ANDREW SEXTON, RESPONDENT. } Dane circuit court.

Opinion.

LYON, *J.*

This cause came on to be heard on appeal from the judgment
128 of the circuit court of Dane County, and was argued by counsel.
On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the circuit court of Dane County, in this cause be, and the same is hereby, affirmed with costs against the said appellant, taxed at the sum of fifty-five dollars.

Upon the entry of which said judgment the following opinion of the court was filed and entered of record in said cause, that is to say:

129 Supreme court. June term, 1872.

ANSON ELDRED, APPELLANT. *vs.* ANDREW SEXTON, RESPONDENT. }

The object of this action is to compel the defendant to convey to the plaintiff certain lands described in the complaint, situated in the county of Oconto. The facts of the case, as they appear from the pleadings, evidence, and findings of the circuit court, are as follows:

By an act approved June 3rd, 1856, Congress granted to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Fond du Lac northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of such contemplated railroad. Section 2 of the act provided that the lands remaining to the United States, being the even-numbered sections, should not be sold for less than double the minimum price
of the public lands, that is, for not less than two dollars and
130 fifty cents per acre; and that lands should not be subject to private entry until they had been first offered at public sale at the increased price. (11 U. S. Stats. at Large, 20.) This grant was made upon certain terms, conditions, and restrictions contained therein,

and was accepted by the State subject thereto. (Laws of 1856, ch. 118.) Subsequently the State granted the same lands, subject to the same restrictions, conditions, and obligations to a corporation created for the purpose of taking such grant, and building the railroad contemplated by it, and known and designated as the Wisconsin and Superior Railroad Company, (Laws of 1856, ch. 137, and pursuant to chap. 17, Pr. & Local Laws of 1857; and chap. 108, Pr. & Local Laws of 1859, and perhaps other laws;) and, by the action of the several corporations therein named, such land-grant became vested in the Chicago and Northwestern Railway Company.

Before 1859, the line of *of* such railroad had been located, and the lands affected by the grant had been surveyed and ascertained,
131 but none of them had been put in market. The lands in controversy in this action are all within six miles of such line and in even sections, and the same were duly offered at public sale, at two dollars and fifty cents per acre, on the 3rd day of May, 1859, pursuant to a proclamation of the President of the United States; but were not sold.

By a joint resolution of Congress, approved April 25th, 1862, a change in the line of railroad thus located was authorized, but no change was made in the quantity or location of the lands thus granted to the State in aid of the construction thereof. The joint resolution provided, however, that the even sections, within six miles of the new line, should be sold at the same price and in the same manner as those on the originally located route, and that purchasers who had paid the increased price for lands on such original route, might, without further payment, enter an equal quantity of lands subject to private entry at one dollar and twenty-five cents per acre, in the Menasha land district. It also
132 provided that the even sections reserved to the United States along the originally located route, by the act of June 3rd, 1856, should, thereafter, be sold at one dollar and twenty-five cents per acre. (12 Stats. at Large, 618.) A change of the route of such proposed railroad was thereupon made, and the lands in controversy are more than six miles from the new line.

After such change, and in December, 1865, and January and March, 1866, the plaintiff made application at the land-office in Menasha, (in which district said lands are situated,) to enter the lands in question, and did purchase the same at private entry, at one dollar and twenty-cents per acre, and the proper officer made and delivered to the plaintiff the usual duplicate certificates of such entries.

In October, 1866, said lands were offered at public sale at the latter price, pursuant to a proclamation of the President, but were not sold.

On the 8th of November, in the same year, the Commissioner
133 of the General Land-Office at Washington, cancelled the entries thus made by the plaintiff, on the ground that the lands had never been offered at public sale at the minimum price of the public lands, and were not therefore subject to private entry. On appeal, this action of the Commissioner was approved and affirmed by the Secretary of the Interior. No patents for these lands were issued to the plaintiff.

In accordance with instructions from the General Land-Office, due notice was given that said lands would be held subject to private entry, at one dollar and twenty-five cents per acre, on and after the 17th day of December, 1866, and on the 19th of the same month the defendant purchased the same at private entry at said land-office at that price, and received from the proper officer the usual duplicate certificates of

such entries, upon which patents have since been issued to him by the United States.

The circuit court further found that, when he made such entries, the defendant was chargeable with constructive notice of entry of
134 the same lands by the plaintiff as above set forth, and that the plaintiff has not received back the price or consideration which he paid therefor.

That court held that when such entries were made by the plaintiff, the lands were not subject to private entry at one dollar and twenty-five cents per acre, and that he thereby acquired no right, title, or interest in or to the same, and thereupon the court gave judgment for the defendant. From that judgment the plaintiff has appealed.

LYON, *J.*

From the foregoing statement of facts, it is apparent that the controlling question to be determined is, were the lands in controversy subject to private entry at one dollar and twenty-five cents per acre at the time the plaintiff entered the same? If this question be answered in the affirmative, the plaintiff is the equitable owner of the lands and entitled to the relief demanded in the complaint; and in such case the judgment of the circuit court is erroneous and should be reversed.
135 But, if the lands were not then subject to private entry, the plaintiff has no interest in them, (his entry thereof having been duly cancelled,) and his complaint was properly dismissed.

It is claimed by counsel for the plaintiff, in the very able argument which he has submitted to this court, that these lands, when entered by the plaintiff, were subject to private entry by virtue of section 4 of the joint resolution of April 25th, 1862. That section is as follows:

"*And be it further resolved*, That the even sections of the public lands, reserved to the United States by the aforesaid act of June 3rd, 1856, along the originally located route of railroad north of the said town of Appleton, and along which no railroad has been constructed, shall hereafter be sold at one dollar and twenty-five cents per acre." This provision is applicable to the lands in controversy. This section contains no express provision that the lands shall be subject to private entry at that price, and we find nothing therein, from which we can infer
136 that Congress so intended. In the latter particular it is unlike the act to graduate and reduce the price of the public lands to actual settlers and cultivators, approved August 4th, 1854, which employs language similar to that in the resolution. (10 Stats. at Large, 574.) That act provides for a reduction in price in favor of actual settlers and cultivators only; and, from the nature of the case, such persons could only obtain the benefits which Congress intended to confer upon them, by being permitted to purchase at private sale. Hence the inference is irresistable that Congress intended to confer that right upon such persons. It seems, therefor', that the argument of the learned counsel predicated upon the language of that act is unsound.

The counsel also argues very ingeniously that, because very many acts directing a public sale of lands provide that the same shall not be sold for less than a given price per acre, while the joint resolution provides that the lands in controversy shall be sold at a given price,
137 using the form of expression in that behalf, contained in other acts authorizing sales at private entry, therefore private, and not public sales were intended by the resolution.

While it may be conceded that the latter form of expression may be more appropriately used in providing for a private sale, where the price

must necessarily be fixed, yet it would be giving an undue importance to mere forms of expression, to allow such a consideration to control the construction to be given to a statute. We think the resolution has the same force and effect that it would have if it provided in terms that the lands should not be sold for less than one dollar and twenty-five cents per acre. Were this otherwise—if therewere so wide a difference between the two forms of expression as is claimed to exist—it would seem to follow that the lands must be sold at all events at the fixed price—no more and no less; and yet it is conceded that should two persons apply at the same time to purchase a given parcel, it might lawfully be sold to him who would pay the highest price therefor, beyond
138 the price fixed by law. In that case, certainly, if in no other, a fixed price per acre means nothing more than that the land shall not be sold for less than that price.

Our conclusion is that the effect of the joint resolution was to restore the lands in controversy to the great body of the public domain, and to subject them to sale under then existing general laws relating to the sale of the public lands.

It is further claimed on behalf of the plaintiff that, although the joint resolution did not render the lands in controversy subject to private entry, yet, inasmuch as they had once been offered at public sale, under the act of June 3rd, 1856, (although at an increased minimum price,) they became subject to private entry by virtue of such general laws, at the reduced minimum price, without being again offered at public sale at such reduced price.

The law is well settled that sales of the public lands at private entry are never permitted until after the lands have been offered at
139 public sales, unless by virtue of some special act of Congress authorizing them to be thus sold. This is not denied. We have already seen that there is no such special act in respect to the lands in question. In order to ascertain whether the offer of these lands at public sale at two dollars and fifty cents per acre is a compliance with this requirement of law, so as to render them subject to private entry at the reduced price, it is necessary to consider the objects of such requirement, and to ascertain we'ther such offer at public sale secured those objects.

It is very evident that the purposes sought to be accomplished by requiring the public lands to be offered at public sales before they become subject to private entry, are—1, to give all persons an equal opportunity to purchase the same; and, 2, to give the Government the benefit of the increased price which might result from competition. It seems apparent that neither of these purposes were accomplished by the offer of the lands at public sale at a minimum price of two dollars and fifty cents per acre; although they were not sold at such increased price, it by no means follows that there were not persons who
140 were willing to pay more than one dollar and twenty cents per acre therefor, and would have done so had the opportunity been given them by a public sale after the minimum price was reduced, and before the plaintiff made his entries. It is true that when so offered at the reduced price they were not sold, but this does not effect the principle involved. The facts that certificates of entry had been previously issued to the plaintiff, and that he claimed to own the land by virtue thereof may have prevented competition at such sale. It seems to us that when the plaintiff attempted to purchase the lands at private entry no equal opportunity had been given to all persons to purchase the same at the reduced price; and that the Government had not had the benefit

which might have resulted from competition between persons desiring to purchase the same parcels. It is not perceived how these objects could be accomplished in any other manner than by again offering the lands at public sale upon due notice after their condition was change' by a reduction of the minimum price.

141 If these views are correct it necessarily follows that the lands were not subject to private entry when the plaintiff entered the same; and that his certificates of entry were properly cancelled by the land-officers of the Government. We have thus adopted the construction which has always been given by the different Departments of the Government to the various laws providing for sales of the public domain; and while their construction of those laws may not be absolutely binding upon the courts, yet it is entitled to very great weight, and should not be overruled in any given case unless clearly erroneous.

Many other questions of minor importance were argued by counsel, but the view we have taken of the controlling question in the case, renders it unnecessary to consider them.

The judgment of the circuit court must be affirmed.

142 STATE OF WISCONSIN,
Supreme Court ss:

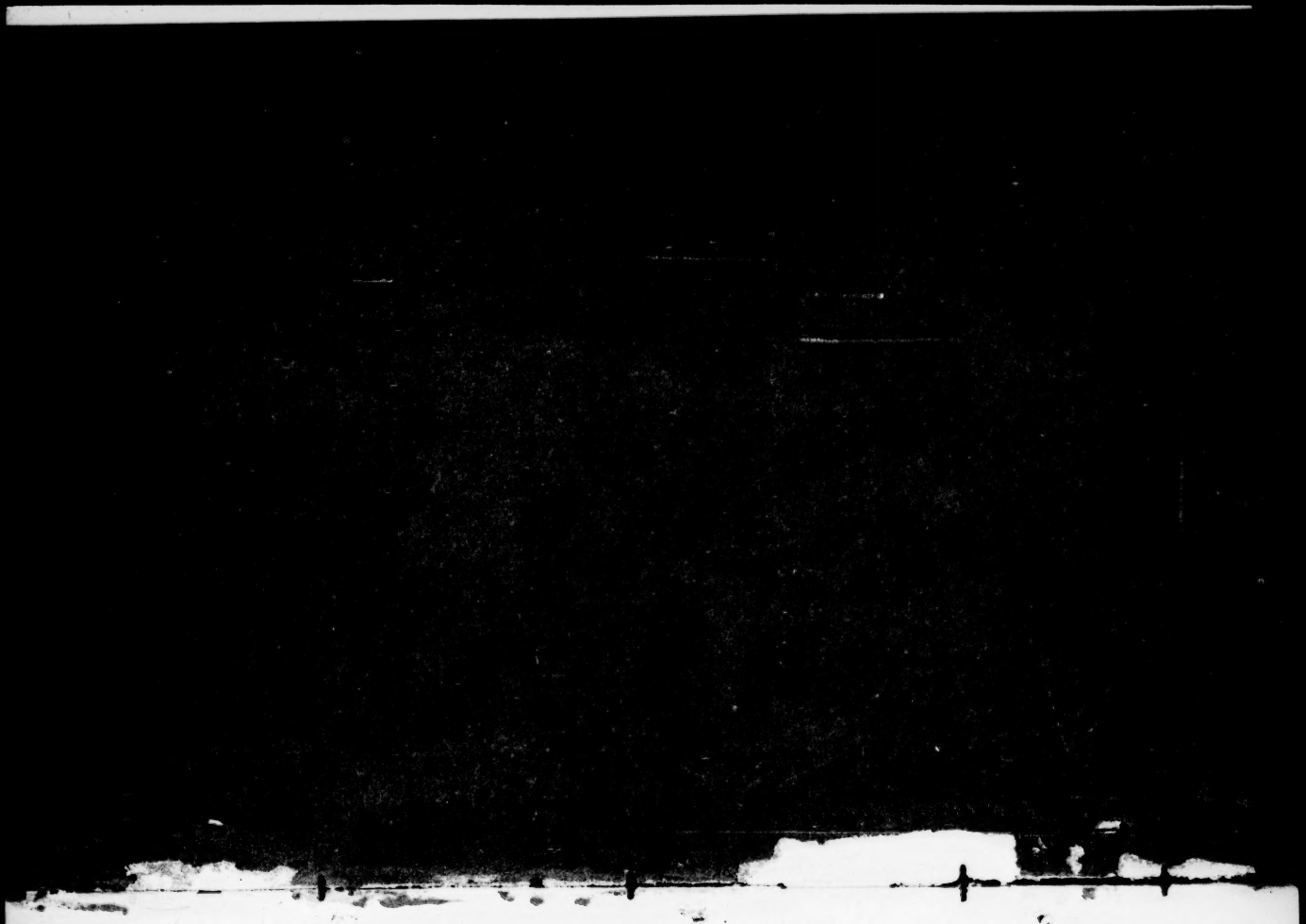
I, La Fayette Kellogg, clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the above and foregoing are the original writ of error and citation with acceptance of service endorsed thereon; that the copy of the bond hereto attached is a true copy of the original on file in my office; that I have compared the annexed copy of the record and proceedings in the above-entitled cause with the originals on file and of record in my office; and that it is a true transcript therefrom, and of the whole thereof; and that I return the same to the Supreme Court of the United States in obedience to the command of the annexed writ.

In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court, at Madison, this 11th day of September, A. D. 1872.

[SEAL.] LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin.

(Indorsed:) Supreme Court of the United States. Anson Eldred, plaintiff in error, vs. Andrew Sexton, defendant in error. Writ of error and return. Clerk's fee for return, $40.50.

(Indorsement on cover:) No. 421. Anson Eldred, plaintiff in error, vs. Andrew Sexton. Wisconsin sup. court. Filed 17th September, 1872.



which might have resulted from competition between persons desiring to purchase the same parcels. It is not perceived how these objects could be accomplished in any other manner than by again offering the lands at public sale upon due notice after their condition was change' by a reduction of the minimum price.

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The judgment of the circuit court must be affirmed.

142 STATE OF WISCONSIN,
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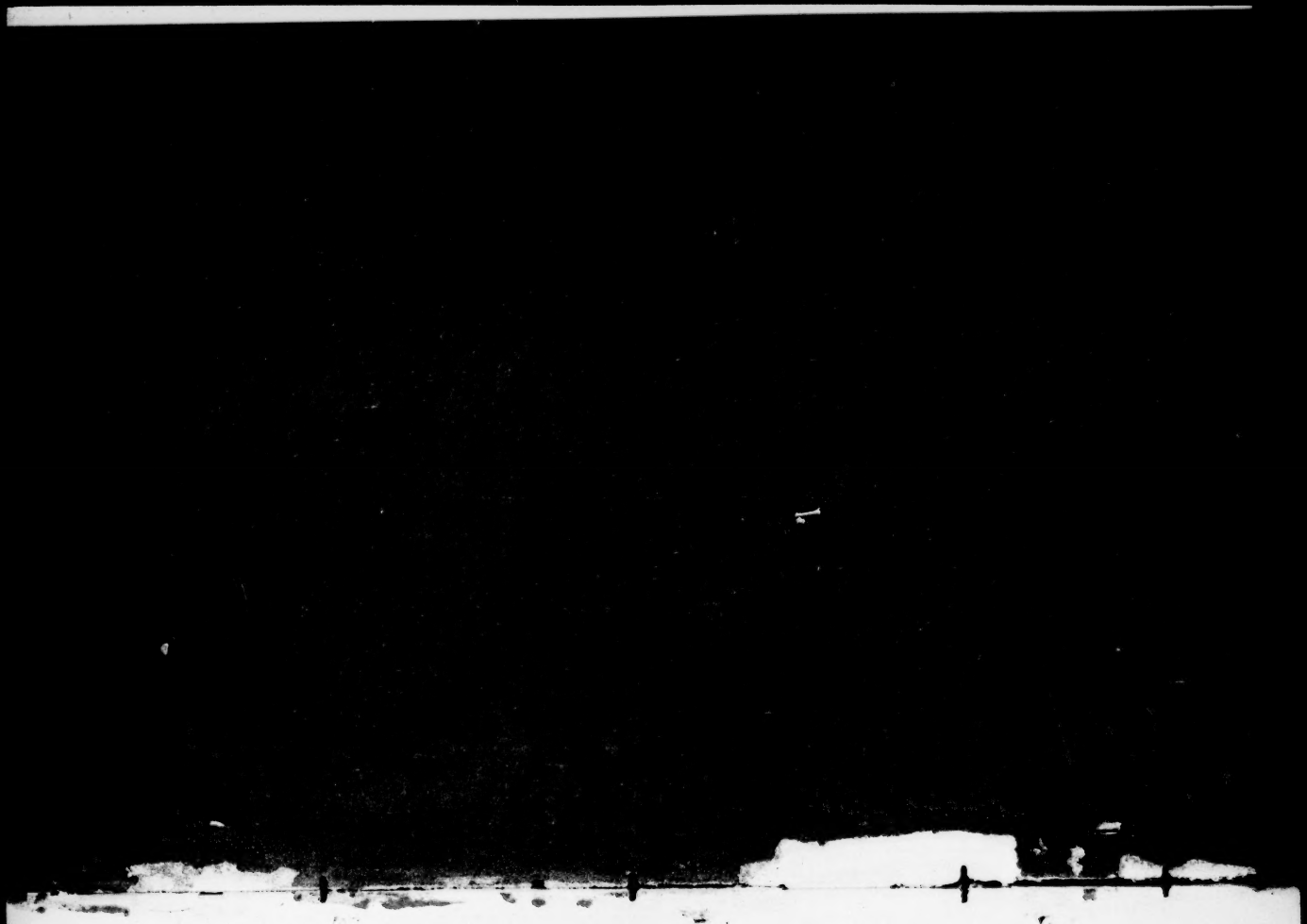
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In testimony whereof I have hereunto set my hand and affixed the seal of our said supreme court, at Madison, this 11th day of September, A. D. 1872.

[SEAL.] LA FAYETTE KELLOGG,
Clerk Supreme Court, Wisconsin.

(Indorsed:) Supreme Court of the United States. Anson Eldred, plaintiff in error, vs. Andrew Sexton, defendant in error. Writ of error and return. Clerk's fee for return, $40.50.

(Indorsement on cover:) No. 421. Anson Eldred, plaintiff in error, vs. Andrew Sexton. Wisconsin sup. court. Filed 17th September, 1872.



SUPREME COURT OF THE UNITED STATES.

ANSON ELDRED, *Plaintiff in Error*,
vs.
ANDREW SEXTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

No. 205, October Term, A. D. 1873.

BRIEF FOR PLAINTIFF IN ERROR.

J. P. C. COTTRILL,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

ANSON ELDRED, *Plaintiff in Error*,
vs.
ANDREW SEXTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

No. 205, OCTOBER TERM, A. D. 1873.

BRIEF FOR PLAINTIFF IN ERROR.

This suit was commenced in the Circuit Court for Oconto county, in the State of Wisconsin; was afterward by stipulation removed to the Circuit Court for Winnebago county; and was afterward by stipulation again removed to the Circuit Court for Dane county, where the same was tried and a judgment rendered for the defendant. From this judgment the plaintiff appealed to the Supreme Court of the State of Wisconsin, which court, after hearing the case, affirmed the judgment of the lower court.

This writ of error was sued out to bring up for review the decision and judgment of the Supreme Court of the State of Wisconsin, as provided by the twenty-fifth section of the judiciary act of 1789.

The writ was properly allowed by the chief justice of the Supreme Court of the State or Wisconsin. (Record, p. 1.)

The case is also one of which this court has jurisdiction under the twenty-fifth section above referred to, as will hereafter fully appear.

For the complaint in the action, see record, pp. 4, 5, 6, 7, 8, and 9.

For the defendant's answer, and the amendment thereto, see record, pp. 13, 14, and 15.

For the finding of facts and conclusions of law by the circuit judge, and the judgment of the Circuit Court, see record, pp. 16, 17, and 18.

For the exceptions filed by the plaintiff to finding and decision of the circuit judge, see record, pp. 18 and 19.

For the bill of exceptions in the case, see record, pp. 20 to 43, inclusive.

For the opinion and judgment of the Supreme Court of the State of Wisconsin, see record, pp. 44, 45, 46, 47, and 48.

STATEMENT OF FACTS.

By an act approved June 3, 1856, Congress granted to the State of Wisconsin certain lands, to aid in the construction of certain lines of railroad, among which was a line from Fond du Lac, on Lake Winnebago, northerly to the State line. The odd-numbered sections were given to the State for the purposes of the grant, and the even-numbered sections were reserved to the United States. The act is printed at length in the complaint, (record, pp. 5 and 6,) but we here give the second section:

"SEC. 2. *And be it further enacted*, That the sections and parts of sections of land which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double

the minimum price of the public lands, when sold, nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price."

That subsequently the Legislature of the State of Wisconsin gave that portion of the grant intended for the line of railroad from Fond du Lac northerly to the State line to the Chicago and Northwestern Railway Company and that afterward, and prior to the year 1859, said railway company, in pursuance of the act granting said lands to it, located its line of railroad; and that the lands in question in this action were within six miles of the line as so located. (Record, p. 20.)

That by proclamation of the President of the United States, bearing date the 24th day of December, 1858, the lands in question, together with other lands, were, on the 2d day of May, 1859, at the Menasha land office, offered for sale, at public sale, at $2 50 per acre, double the minimum price, and at the close of said sale remained unsold. (Record, pp. 20 and 21.)

That afterward Congress passed a joint resolution, entitled "A resolution explanatory of and in addition to the act of June 3, 1856, granting public lands to the State of Wisconsin to aid in the construction of railroads in said State," and approved April 25, 1862, which explanatory resolution is set forth at length in the complaint. (Record, p. 21, and also pp. 7 and 8.)

The first section of the resolution authorizes a change of the location of the line of railroad designated in the land-grant act as being from Fond du Lac northerly to the State line.

The third and fourth sections of the resolution are as follows:

"SEC. 3. *And be it further resolved*, That the Secretary

of the Interior be, and he is hereby, authorized to cause all even sections or parts of even sections of public land that may be brought within six miles of the new line of railroad, as herein provided for, to be sold at the same price and in the same manner those have been upon the originally-located route of railroad. And all purchasers, or their heirs or assigns, within the six-mile limits of the said originally-located route who shall be more than six miles from the new line of route herein authorized, and who have paid the sum of $2 50 an acre, shall have the right either to exchange their location upon the line as first established to the new line, upon the same terms, in like quantities, and in the same manner as on the line first established, as aforesaid; or, at their option, to enter, without further payment, anywhere within the Menasha land district, in the State of Wisconsin, an additional quantity of public lands subject to private entry, at $1 25 an acre, equal to the quantity entered by them at $2 50 an acre, so that the lands originally entered by them shall be thus reduced to the rate of $1 25 an acre.

"SEC. 4. *And be it further resolved*, That the even sections of public lands, reserved to the United States by the aforesaid act of June 3, 1856, along the originally located route of railroad north of the said town of Appleton, and along which no railroad has been constructed, shall hereafter be sold at one dollar and twenty-five cents an acre."

That afterward, and prior to the time that plaintiff made his alleged entries, the said Chicago and Northwestern Railway Company, in pursuance of the authority given by said explanatory resolution, changed the location of its said line of railroad, and relocated the

same more than six miles distant from the lands in question. (Record, pp. 21 and 22.)

That afterward, and on the 28th day of December, 1865, the 15th day of January, and the 9th day of March, 1866, at the Menasha land office, the plaintiff entered and paid for the lands in question at one dollar and twenty-five cents per acre, and received from the register of said land office the usual duplicate certificates of entry therefor. (Record, pp. 22 and 23.)

That afterwards, and on or about the 3d day of November, 1866, the Commissioner of the General Land Office, at Washington, undertook to cancel the entries made by plaintiff, for the alleged reason that the lands had not been first offered at public sale at the reduced price, and hence not regarded as subject to ordinary private entry. (Record, pp. 29, 30, 31, 33, 34, 37, and 38.)

That afterward the register and receiver of the Menasha land office caused to be published in the "Island City Times," a newspaper published in Neenah and Menasha, in said State of Wisconsin, for four weeks in succession, commencing on the 13th day of November, 1869, a notice of which the following is a copy, to-wit:

PUBLIC NOTICE.

"In pursuance of instructions from the Commissioner of the General Land Office, notice is hereby given that the following described lands, which have been withdrawn from market, by reason of canceled entries, will be restored and subject to private entry, on and after the 17th day of December, 1869." (Here follows a description of certain lands, including the lands in question, and then comes the following:)

"Dated Land Office, Menasha, Wisconsin, November 10, 1869.

"JOSEPH KEYES, *Register*,
"NORMAN THATCHER, *Receiver*."

(Record, pp. 35 and 36.)

Defendant testifies that he saw this notice, and attended at the Menasha land office on the 17th day of December, 1869, and that on the 18th day of same December he entered in person, at said land office, the lands in question. (Record, pp. 39 and 40.)

That at the time plaintiff made his alleged entries of the lands in question such entries were according to law, and the rules and regulations of the Land Department, duly noted upon and made a part of the records of said Menasha land office, and have ever since that time appeared, and do now appear, upon the records of said office. (Record, pp. 24, 25, and 26.)

That on the 1st day of July, 1870, the Government issued to defendant patents for said lands. (Record, p. 39.)

The above is a brief history of the case as it appears from the record.

Plaintiff claims that his entries of the lands in question were legal and valid, and that he thereby acquired from the Government a paramount and superior title to the lands, and he has brought this action to compel defendant to convey to him all right, title, and interest which he (defendant) has or claims to have in and to the lands, and for such other and further relief as may be equitable.

The Circuit Court below, in its finding upon the trial, has found the facts of the case substantially as alleged and claimed by plaintiff, but has found, as conclusions of law, that the lands were not subject to private entry at

the time plaintiff entered them; that he acquired no right, title, or interest in or to the lands by his entries, and that he is not entitled to the relief prayed for, and the Supreme Court of Wisconsin has affirmed this judgment.

If the lands were subject to private entry at the time plaintiff entered them then he acquired a good title to the lands, and one that is paramount to all others, and is entitled to the relief demanded. This, then, is the main question in the case to be determined; all others are merely collateral.

ASSIGNMENT OF ERRORS.

The Supreme Court of the State of Wisconsin erred in deciding that the lands in question in this suit were not subject to private entry at one dollar and twenty-five cents per acre at the time they were so entered by the plaintiff in error, under and by virtue of the fourth section of the explanatory resolution passed by Congress and approved April 25, 1862. (said resolution being the same found on pages 7 and 8 of printed record,) and of other acts of Congress applicable thereto, and that the plaintiff in error acquired no right, title, or interest in or to said lands by reason of his said entries, and that his said entries were properly canceled by the Commissioner of the General Land Office, and also in affirming with costs the judgment of the Circuit Court of Dane county in this cause. (Record, pp. 44, 45, 46, 47, and 48.)

BRIEF OF THE ARGUMENT.

I.

The lands in question were subject to private entry at one dollar and twenty-five cents per acre at the time they

were entered by the plaintiff; his entries were legal and valid, and invested him with a title paramount and superior to all others, and of which he could not be lawfully divested by the act of any officer or agent of the Government.

When and how the public lands shall become subject to private entry at the minimum price does not depend upon any mere rule, regulation, or practice of the Land Department of the Government, or upon the mere whim or say so of the officers who control and execute that department, but upon the positive enactments of Congress, and when these enactments have been complied with so that the public lands once become subject to private entry they remain so, unless their condition is again changed by force of law. What we mean is this, that there is no discretionary power reposed in the officers of the Land Department by which they can say that certain lands shall be in the market subject to private entry to-day, and that to-morrow they shall not. The Government does not transact its land business upon any such changeable basis as this, but it makes standing and fixed offers, or propositions, by virtue of its laws, and any one can close the contract by complying with the conditions imposed by law.

Let us inquire when and how the public lands become subject to private entry at the minimum price as provided by law.

Section 3, of the act of Congress, approved April 24, 1820, (Brightley's Digest, p. 480, Sec. 125,) is the law upon this subject applicable to the public lands in general. It provides as follows:

"The price at which the public lands shall be offered for sale shall be one dollar and twenty-five cents an acre, and at every public sale the highest bidder who shall

make payment as aforesaid shall be the purchaser; but no land shall be sold either at public or private sale for a less price than one dollar and twenty-five cents an acre; *and all the public lands which shall have been offered at public sale before the first day of July next, and which shall then remain unsold, as well as the lands that shall thereafter be offered at public sale, according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry as aforesaid," &c.*

We here see that all public lands which shall have been offered at public sale, according to law, and remain unsold at the close of such sale, *shall* be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre.

The above law, ~~as~~ applicable to the lands in question, was modified by section two of the act of Congress of June 3, 1856, granting public lands to the State of Wisconsin to aid in the construction of railroads, which section is given at length in a former part of this brief. The modification is that the minimum price of the lands is fixed at $2 50 per acre, and the lands shall not become subject to private entry until they have been first offered at public sale at that price.

The lands in question were a part of the even sections reserved to the United States by the terms of said grant, and were within six miles of the line of railroad first located under said grant; ~~that~~ said line of railroad was first located prior to the year 1859; and ~~that~~, by virtue of the proclamation of the President of the United States, bearing date December 24, 1858, the lands in question, together with other lands, were, on the 2d day of May, 1859, at the Menasha land office, offered for sale at public

sale at $2 50 per acre, and at the close of said sale remained unsold. The conditions of the law having been complied with, the lands in question thereby became and remained subject to private entry at said Menasha land office at $2 50 per acre; *and they were thus subject to private entry at the time Congress passed the explanatory resolution of April* 25, 1862.

We desire the court to keep this fact well in mind, for upon it hangs the question we have under discussion.

Congress, when it passed the explanatory resolution, must have known the condition these lands were in, and that they were subject to private entry. We find in the resolution itself unmistakable evidences of such knowledge. The resolution authorizes a change of the location of the line of railroad, and it speaks of the "line of railroad as now located according to the records of the General Land Office," which shows that Congress knew that a line of railroad had been located in pursuance of the grant, and that its knowledge was derived from the records of the General Land Office. The resolution also provides that purchasers within the six-mile limits of the originally located route, who shall be more than six miles from the new line, and who have paid the sum of two dollars and fifty cents an acre, shall have the right to exchange their location to the new line, upon the same terms and in like quantities; or, at their option, to enter without further payment, anywhere within the Menasha land district, an additional quantity of public lands subject to private entry, at one dollar and twenty-five cents an acre, *equal to the quantity entered by them at two dollars and fifty cents an acre, so that the lands originally entered by them shall be thus reduced to the rate of one dollar and twenty-five cents an acre.* The above provisions show beyond dispute that Congress knew at the time it passed the reso

lution that the even sections within the six-mile limits of the line as originally located were in the market subject to entry at $2 50 per acre; if not, why did they legislate with reference to such entries by authorizing a change of location to the six-mile limits of the new line, or by authorizing the entry of an additional quantity of lands equal to those already entered at $2 50 per acre, so as to reduce the price to $1 25 per acre.

Having shown thus clearly that Congress knew that the lands in question were subject to private entry at $2 50 per acre at the time they passed the explanatory resolution, is it not reasonable to say that in legislating upon them they kept in mind the fact that they were thus subject to private entry? And if it had been their intention to have withdrawn these lands from market, and not had them subject to private entry until they had again been offered at public sale at the minimum of $1 25 per acre, would they not have expressed such intention in the explanatory resolution, in terms clear and unequivocal, rather than to have left it as a matter of conjecture or doubtful construction? Ordinary wisdom and caution on the part of the legislators would have dictated a clear expression of intention in reference to so important a matter of legislation as this; and we think we have discovered at least one instance of the exercise of such wisdom and caution on the part of Congress, and that is in the second section of the land-grant act above referred to, where they enacted as follows: "Nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price." Congress did not intend to leave it a matter of doubt or construction as to whether the even sections within the six-mile limits of the grant should become subject to private entry by being first offered at public

sale at the ordinary minimum price of $1 25 per acre, as provided by the general law, but expressly enacted that they should first be offered at public sale at the increased price. Had Congress omitted the above provision from the said second section it would not have been difficult to have determined what was its intention in the premises, as it had provided in a former part of the section that the lands should not be sold for less than double the minimum price of the public lands when sold, and of course when offered at public sale they would have to be offered at the increased price. We cite the above as an illustration only of the care and caution exercised by Congress in legislating in reference to the public lands.

We say that the clear intention of Congress, as expressed in the explanatory resolution, was to leave the lands in question still subject to private entry, but at the reduced price of $1 25 per acre, as provided by the fourth section of the resolution. The only change produced upon these lands by the resolution was to reduce their price from $2 50 to $1 25 per acre, otherwise they stood in the same condition and situation to which they had been brought by the force of other laws and the acts of the officers and agents of the Government under those laws.

The last clause of the third section of the resolution shows the intention to have been only to reduce the price of the lands, and not otherwise to change their condition in the market. This last clause of the third section gives the reason for the other provisions of that section, and is, "that the lands originally entered by them *shall be thus reduced to the rate of one dollar and twenty-five cents an acre;*" and, although it may be said that the third section relates almost wholly to lands which had actually been entered prior to that time, yet we claim that this reason

annexed to it was a part of the spirit and intention running through the whole act, and especially when followed by the fourth section, which relates wholly to a reduction of price.

Now let us take another view of the third section of this resolution to further interpret the intention of Congress in this legislation. Say that prior to the passage of the explanatory resolution, and while the line of railroad first located remained unchanged, and while the even sections within six miles of that line were in the market subject to private entry at $2 50 per acre, a party had entered at the Menasha land office a quarter section of land, and paid therefor $2 50 per acre; now say that, after the passage of an explanatory resolution and the relocation of the line, this quarter section was not within the six miles of the new line, under the third section of the resolution the party who entered this quarter section would be entitled to enter another quarter section within the Menasha land district subject to private entry at $1 25 per acre. Now suppose that he actually enters the additional quarter section, what is the practical result of the transaction in reference to the first entry? Is it not that the first quarter section. by virtue of the operation of the explanatory resolution, was in effect entered at private entry at one dollar and twenty-five cents per acre?

We give as a very strong and apparent reason why Congress did not intend to have the lands in question withdrawn from market, and reoffered at public sale at $1 25 per acre before they should be subject to private entry, *that they had already practically been offered at public sale at that price.* The theory of the Government in this land-grant legislation has been, and is, that the public lands within six miles of a railroad would be at least doubled in value by the location and construction of a

road so near them, and that such increased value was a compensation to the Government for donating the alternate sections to aid in the construction of the road. *Hence the price of* $2 50 *per acre within the six-mile limits has always been deemed the equivalent of* $1 25 *without those limits.* We say, therefore, that the offer of these lands at public sale at the minimum price of $2 50 an acre, while they were within the six-mile limits, was precisely equivalent to an offer of the same at the price of $1 25 when outside of those limits. At the offer of $2 50 per acre of lands within the six-mile limits there would be the same inducement for purchasers to bid, and the Government would receive the benefit of the same competition that there would be in the offer of lands at $1 25 per acre without the six-mile limits. Hence there was no sound reason or policy for treating these lands, after the passage of the first resolution as though they had not been offered at public sale at the reduced price, and Congress so viewed the matter, and plainly intended that they should not again be reoffered.

The fourth section of the explanatory resolution fixed the price of the even sections of land within the limits of the old line *absolutely* at $1 25 per acre. That section is as follows:

"*And be it further resolved*, That the even sections of public lands reserved to the United States by the aforesaid act of June 3, 1856, along the originally located route of railroad, north of the said town of Appleton, and along which no railroad has been constructed, SHALL HEREAFTER BE SOLD AT ONE DOLLAR AND TWENTY-FIVE CENTS AN ACRE."

That we may the better determine whether Congress by this section intended to make the price of these lands absolute at $1 25 per acre, in the sense of fixing the price of lands to be sold at private entry, let us examine the

language used in acts fixing the minimum price for lands where it was intended they should first be offered at public sale before being subject to private entry.

The language used in the general act, fixing price of public lands, and found in section 3 of act, approved April 24, 1820, (Brightley's Digest, page 480, section 125,) quoted above, is "*but no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents per acre.*"

The language used in section 2 of the land grant act above referred to, is "*shall not be sold for less than double the minimum price of public lands when sold.*"

We also refer to the language used in the following acts found in Brightley's Digest:

Page 478, Sec. 114, "*shall not be sold for less than two dollars per acre.*"

Page 480, Sec. 126, "*Provided, that no such lands shall be sold at any public sales hereby authorized for a less price than one dollar and twenty-five cents an acre.*"

Page 496, Sec. 220, "*no lands shall be sold by virtue of this act, at either public or private sale, for less than two dollars per acre.*"

Page 503, Sec. 257, "*the lands shall not be sold for less than two dollars an acre.*"

Page 504, Sec. 260, "*the lands shall not be sold for less than two dollars an acre.*"

Page 515, Sec. 333, "*the lands shall not be sold for less than two dollars an acre.*"

Page 516, Sec. 340, "*the lands shall not be sold for less than two dollars an acre.*"

Page 528, Sec. 394, "*Provided always, that the lands which may be sold at public sale by virtue of this act shall not be sold for less than two dollars an acre.*"

Page 549, Sec. 505, "*the lands shall be sold for a price not*

less than that which has been, or may be, fixed by law for the public lands in the Mississippi Territory."

Page 550, Sec. 507, "*and no tract of land shall be sold at said public sales for a less price than that which is, or may be, prescribed by law for the sale of public lands in the Mississippi Territory.*"

Page 550, Sec. 508, "*the lands shall be sold for a price not less than that which has been, or may be, fixed by law for public lands northwest of the river Ohio, and above the mouth of Kentucky river.*"

An examination of the acts above referred to will show that the foregoing extracts from them are all coupled with and relate to public sales, and we also see that there is a wonderful uniformity of expression used in all of these acts. Where it is intended to fix a minimum price the language invariably used is, that the lands shall not be sold FOR LESS than a certain sum per acre.

Now let us observe the form of expression used in the statutes fixing the price at which lands shall be sold at private entry, and we will refer to the following acts found in Brightley's Digest:

Page 480, Sec. 125—"*Shall be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre.*"

Page 481, Sec. 135—This section provides for a graduated scale of prices for the public lands, and the form of expression used is, "*shall be subject to sale at the price of one dollar per acre.*" And the same form is used with reference to each price fixed by this section. By referring to section 137, on page 482, we find that the prices fixed by the above section 135 were with reference to sales at private entry.

By the acts last referred to we see that the price at

which lands are to be sold at private entry is fixed at a certain sum, neither more nor less, and in this sense the price is absolute. The same is true of the fourth section of the explanatory resolution, it says that the lands "*shall hereafter be sold at one dollar and twenty-five cents an acre.*" It would seem from the above examination of the acts of Congress on this subject that we must necessarily come to the conclusion that Congress, by the fourth section of the resolution, was fixing the price at which lands should be sold at private entry, and not at public sale.

The object of a public sale is to invite competition, that the Government may realize the highest price for its lands, but if land is to be sold at a certain price, neither more nor less, as in the case of private entry, why play the farce of putting it up at auction?

The lands in question had already been offered at public sale, and the requirements of the law, in order to make them subject to private entry, had in every respect been fulfilled. Congress knew this fact, as we have before conclusively shown, and when they legislated to take these lands without the limits of the grant, such legislation was with reference to the condition they then occupied in the market by virtue of the force and operation of other laws. They did not deem it necessary or advisable to again offer these lands at public sale, and the price was fixed at a certain sum, because they were not to be competed for at public sale, but were to remain subject to private entry, as they had been prior to the passage of the resolution, but at the reduced price.

Nowhere in all of the great mass of legislation in reference to the public domain can a law be found which, by express provision, or intendment, requires lands that have once become subject to private entry, and the price of which may afterward be changed, to again be offered at

public sale, after the change in price, before they shall be subject to private entry, or, in other words, that a mere change in price withdraws lands from market. We challenge the counsel for defendant to produce such a law. Such requirement, if any exists, is based wholly upon the practice of the Land Office. Commissioner Wilson, in his letter to Secretary Browning, of the date of April 11, 1867, submitting Mr. Eldred's appeal from his decision, says: "This proceeding was based upon the *established practice of the office*, requiring, when lands had been offered and their condition subsequently changed, either in price or by cancellation of entry, the same shall be restored to market after proper notice, so as to afford competition before being subject to ordinary private sale or location."

Now, here we have an *established practice* of the Land Office arrayed against a positive enactment of Congress as expressed in the explanatory resolution. Which shall prevail, the Land Office or Congress?

It was claimed by counsel for defendant in his argument in the court below, and we presume will be claimed here, that the statutes relating to the sale and disposal of the public lands are in *pari materia* and must be construed together so as to make the entire system harmonious and consistent. Admit it for the sake of the argument; but we do not admit that the learned counsel makes a proper application of this rule of construction to the case in hand, or that his conclusions drawn therefrom are correct. For instance, he claims that the fourth section of the resolution must be construed so as to harmonize with section three of the act approved April 24, 1820, above cited and quoted, and by giving it that construction we must conclude that it fixed a minimum price for the lands rather than one to be paid at private entry, and that the explanatory resolution simply returned or restored the lands in

question to the great body of public lands to become subject to and controlled by the provisions of section three above mentioned. Our answer to this is, that section three only applies to lands which have never been in the market, and that Congress, when it enacted that section, were legislating in reference to lands that were not then in market, but which were to be brought into market by virtue of that section. On the other hand, when they enacted the explanatory resolution they were legislating in reference to lands which were then in market, and which had already been subjected to the force and operation of section three as modified by section two of the land grant act of June 3, 1856. Taking into consideration this difference in the condition of the two subjects of legislation, we think that the construction we claim for the fourth section of the resolution is in full and perfect harmony with the spirit of section three of the act of April 24, 1820.

Again, the construction we claim for section four of the resolution is not in conflict, as claimed by defendant's counsel, with section six of the act of April 24, 1820, which provides "that where two or more persons apply for the purchase at private sale of the same tract at the same time the register shall determine the preference by forthwith offering the tract to the highest bidder."

Now, this section merely provides for the determination of a preference, and such a provision was very necessary, as two or more persons might at the same time make application to enter the same tract, and how else could the register, in justice, determine who should be the purchaser except by giving the tract to the one who would pay the highest price? To leave the decision to the arbitrary will of the officer would compel him to exercise favoritism with reference to this person or that. Now,

what we claim for the fourth section is, that it fixed the price of these lands absolutely at $1 25 per acre, neither more nor less, in the same sense that other statutes fix the price of lands which are to be sold at private sale by entry; that in fact it was fixing a price for lands which were already subject to private entry, and in determining a matter of preference between two or more applicants for the same tract at the same time, section six, above cited, would apply to the lands in question as well as to any other lands subject to private entry.

Again, it is claimed by counsel for defendant that had it been the intention to declare that these lands should be subject to private entry at the price of $1 25 per acre Congress would have employed the words in which that provision, in its legislation on the subject of public lands, is expressed; that is, it would have used the words "private entry," which the United States Supreme Court, in Chotard *vs.* Pope, 12 Wheat., 586, have decided have acquired a settled and fixed meaning as much as any technical term used in the common law. We do not dispute the fact that these words have a fixed and settled meaning in the law, but we do say that the counsel has again made a misapplication of the law to this case. He has again overlooked the fact that these lands were already subject to private entry at the time Congress passed the explanatory resolution, and that it was not necessary to use any technical terms to express an intention that they should so remain, for they would remain so unless Congress legislated that they should not.

Now, we submit that we have established beyond controversy that Congress, when it passed the explanatory resolution, plainly intended that the lands in question should remain subject to private entry, but at the reduced price of $1 25 per acre, and that they were subject to

private entry at that price at the time plaintiff entered them, and his entries were therefore legal and valid.

II.

Lands which have once become subject to private entry can not be withheld or withdrawn from market at the mere pleasure or will of the Commissioner of the Land Office, or any other officer of the Government, neither can he or they make or establish rules by which lands shall be withdrawn. The law determines when and how public lands shall become subject to private entry and when the conditions of the law have been fulfilled in this respect it requires something having the force of law to withdraw them from market. No mere regulation or practice of the Land Department can repeal a positive enactment of Congress. The explanatory resolution of Congress did not, by any of its express or implied provisions, withdraw the lands in question from market, neither did it repeal or conflict with any part of the general law relating to private entries. The officers of the Land Department never, by any affirmative act, withdrew these lands from market after they became subject to private entry in May, 1859, and prior to the plaintiff's entries. The lands, in fact, had never been suspended from private sale prior to the time plaintiff entered them. Admitting for the sake of the argument that such officers had the power to make such withdrawal, yet, if they did not exercise it, the condition of the lands would remain unchanged, and they would still be subject to private entry.

(Lester's Land Laws, Regulations and Decisions, p. 354, No. 406.)

III.

If we are wrong in our views that the lands in ques-

tion were subject to private entry at $1 25 per acre, at the time plaintiff entered them, then we insist that they were still subject to private entry at $2 50 per acre, and that plaintiff, having been permitted by the officers of the land office to enter and pay for the lands at $1 25 per acre, acquired an equitable interest in the lands, of which he could not be divested until the Government had first demanded of him the additional sum of $1 25 per acre and he had refused or neglected to pay it.

IV.

Plaintiff's entries being valid, he thereby acquired such a title to the lands as could not be disturbed or affected by any act of the officers of the Land Department; and as against parties suffered by the Government to make subsequent entries of the same lands, plaintiff has a paramount claim which he is entitled to assert against them in the courts. Plaintiff's entries became a matter of record in the Land Office at the time they were made, and remained so, of which defendant, as a subsequent locator, might have had notice, and therefore he must be presumed to have had it. At the best, he stands in the position of a subsequent purchaser, with notice of plaintiff's prior equities, and he should be compelled to convey to plaintiff whatever interest he has acquired in the lands by reason of his subsequent entries. Whatever title or interest defendant has acquired in the lands he holds as trustee for plaintiff.

Upon the question of the records of the Land Office being notice, the U. S. Supreme Court, in Bodley vs. Taylor, 5 Cranch, 191, say: "The true ground of the jurisdiction of a court of equity is, that an entry is considered as a record of which a subsequent locator may

have notice, and therefore must be presumed to have it; consequently, although he may obtain the first patent, he is liable in equity to the rules which apply to a subsequent purchaser with notice of a prior equitable right."

And the Supreme Court of Wisconsin, in Schnee *vs.* Schnee, 23 Wis., 377, say: "The doctrine contended for may be true of different purchasers from the Government of the same tract of land, which sometimes happens through mistake or otherwise. The last purchaser in such case may be, and no doubt is, chargeable with knowledge of any facts appearing by the records of the land office at which he purchases, or of the General Land Office, going to show the claim or title of the first purchaser."

Jarvis *vs.* Dutcher *et al.*, 16 Wis., 307; see p. 314.

We also cite upon this point the cases cited under the last point in this brief.

V.

The circuit judge erred, and the Supreme Court also in affirming the judgment, in rejecting the proofs offered in reference to the lands entered by George McCook and Diantha Farnsworth and the patents issued by the Government to them upon such entries. (Record, p. 26.) The lands so entered by them were exactly in the same condition as the lands entered by plaintiff, and if plaintiff's entries were void so were McCook's and Farnsworth's, but the Government issued patents to them.

The Commissioner of the General Land Office claims to have canceled plaintiff's entries because they conflicted with an *established practice or regulation* of the Land Office, and these proofs were offered to show that they had no such established practice or regulation applicable to these lands. If they had, then the issuing of patents

to McCook and Farnsworth was purely an act of favoritism.

It can not be claimed that the issuing of patents to these parties was a mistake, and especially the McCook patents, for they were issued November 20, 1866, but a few days after Commissioner Wilson had canceled the entries made by plaintiff, and such cancellations must have been fresh in his mind when these patents were issued.

VI.

Plaintiff is not estopped from going into a court of justice to litigate his claim and title to the lands in question by the fact that he appealed from the decision of the Commissioner of the General Land Office in canceling his entries to the Secretary of the Interior, who affirmed the decision of the Commissioner. This question is not considered as open to argument on this appeal, as the plaintiff in error assumes that the only question here is the construction of the acts of Congress in question. But as the point was raised in the answer and in the court below the authorities are again referred to:

Lindsey *et al. vs.* Hawes *et al.*, 2 Black., 554.

Cunningham *vs.* Ashley *et al.*, 14 How. U. S., 377.

Barnard's heirs *vs.* Ashley's heirs, 18 How. U. S., 43.

Garland *vs.* Wynn, 20 How. U. S., 8.

Comegys *vs.* Vasse, 1 Peters, 212.

Lyttle *et al. vs.* State of Arkansas *et al.*, 22 How. U. S., 192.

Gains *vs.* Thompson, 7 Wallace, 847—see 353.

O'Brien *vs.* Perry, 1 Black., 132.

State of Minnesota *vs.* Bachelder, 1 Wallace, 109.

J. P. C. COTTRILL,
Of Counsel for Plaintiff in Error.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1873.

NO. 205.

ANSON ELDRED, *Plaintiff in Error,*

vs.

ANDREW SEXTON, *Defendant in Error.*

ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

S. U. PINNEY,
Counsel for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1873.

NO. 205.

ANSON ELDRED,

Plaintiff in Error,

vs.

ANDREW SEXTON,

Defendant in Error.

Error to the Supreme Court of Wisconsin.

The single question in this case, is whether the lands in [redacted] at the time the plaintiff in error made the entries under which he claims title, were subject to private entry at the minimum price of $1.25 per acre. These entries were made at the Menasha Land Office between December 28, 1855, and March 10, 1866, and upon being reported to the General Land Office, were canceled by the Commissioner, on the ground that when they were made, the lands were not subject to private entry, at such minimum price. Upon appeal, his action was affirmed by the Secretary of the Interior, April 18th, 1867. Printed record, 29 to 32.

These lands having been subsequently offered at public sale, at the minimum price, became subject to private entry, and on the 18th of December, 1869, were entered by the defendant in error, and patented to him July 1, 1870. P. R., 7, 39.

The plaintiff in error claiming to be the equitable owner, brought this action to obtain the legal title from the defendant in error, treating him as a trustee of such title for his benefit.

In the Circuit Court it was held, that the lands in question were not subject to private entry, when the plaintiff in error made his entries; that the defendant in error had both the equitable and legal estate, and upon appeal, the Supreme Court of Wisconsin affirmed this ruling, and its opinion is found at page 44 of the printed record. See the same case, 30 Wis., 139.

The correctness of this ruling, depends upon the construction and effect to be given to certain congressional legislation, as applied to the facts.

The following is a summary of these acts and of the material facts:

By act of Congress of June 3, 1856, (11 U. S. Stat. at Large, 20) it granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Fond du Lac northerly to the state line, every alternate section of land, designated by odd numbers for six sections in width, on each side of such contemplated railroad.

Section 2 of the act provided that the lands remaining to the United States, being the even numbered sections, should not be sold for less than *double the minimum price* of the public lands, that is, for not less than $2.50 per acre, and should not be subject to *private entry*, until they had been first offered at public sale at such increased price.

This grant, subject to its terms, conditions and restrictions, was accepted by the State, (Private and Local Laws of Wis. for 1856, ch. 118) and granted by it to a corporation created for the purpose of receiving it and building the contemplated road, called the Wisconsin & Superior Railroad Company, (Private and Local Laws of Wis., ch. 137), and by subsequent legislation and the action of the corporations therein mentioned, (Private and Local Laws of Wis for 1857, ch. 117, and Private and Local Laws of Wis. for 1859, ch. 108), this land grant became vested in the Chicago & Northwestern Railway Company.

Before 1859 the line of the railroad had been located, and the lands affected by the grant had been surveyed and ascertained, but none of them had been brought into market.

The lands in controversy are within six miles of such line, in *even* numbered sections, and were duly offered at public sale at $2.50 per acre, on the 3d of May, 1859, pursuant to a proclamation of the President, but were not sold, but they became subject to private entry *at* $2.50 *per acre.* None of the even numbered sections along the line of the road further north than township 33, were so offered

By a joint resolution of Congress of April 25, 1862, (12 U. S. Stat. at Large, 618), a change in the line of the railroad thus located was authorized, but no change was made in the quantity or location of the lands granted to the State to aid in its construction. The joint resolution provided, however, (sec. 3), "that the Secretary of the Interior be and "he is hereby authorized to cause all *even* sections or parts of *even* sec- "tions of public lands, that may be brought within six miles of the *new* "line of railroad as herein provided for, to be sold *at the same price and* "*in the same manner*, as those have been upon the *originally located*

"*route* of said railroad; and *all purchasers* or their heirs or assigns, *within* "*the six mile limits of the said originally located route, who shall be* "*more than six miles from the new line of route herein authorized, and* "*who have paid the sum of* $2.50 *an acre*, shall have the right, either "to exchange their location upon the line as at first established to the "new line, *upon the same terms and in like quantities, and in the same* "*manner*, as on the line first established as aforesaid, or at their option, "*to enter without further payment* any where in the Menasha land dis- "trict in the State of Wisconsin, an additional quantity of public lands, "subject to private entry, at $1.25 an acre, *equal to the quantity entered* "*by them at* $2.50 *an acre*, so that the lands originally entered by them "shall be thus reduced to the rate of $1.25 an acre." By the 4th sec- tion it was provided, that the even sections of public lands "reserved to "the United States, by the act of June 3, 1856, (the original grant) along "the originally located route of railroad north of the town of Appleton, "(the point where the change of route began) *and along which no rail-* "*road has been constructed, shall hereafter be sold at one dollar and* "*twenty-five cents per acre.*"

A change in the route of the railroad was thereupon made, and the lands in controversy are more than six miles from the *new* line and within six miles of the *old* line.

After such change of location, and in December, 1865, and January and March, 1866, the plaintiff in error made application at the Land Office in Menasha, (in which district the lands are situated), to enter the lands in question, and did purchase the same *at private entry* at $1.25 per acre, and the proper officer made and delivered to him the usual du- plicate certificates of such entries.

Afterwards, October 15th, 1866, these lands were offered at public sale at the price of $1.25 per acre, pursuant to the proclamation of the President, but were not sold. The lands in controversy had been marked on the plats as entered—and these entries having been reported to the General Land Office, the Commissioner, Nov. 8, 1866, canceled them, on the ground that when they were made, *these lands had never been offered at public sale at the minimum price of the public lands*, and were not therefore subject to private entry. On appeal to the Secretary of the Interior, MR. BROWNING, this action of the Commissioner was affirmed.

Afterwards, in pursuance of instructions from the General Land Office, notice was given by the proper officers that the land in question, which had been offered at public sale, but subsequently withdrawn from market by reason of canceled entries, would be restored and subject to private

The correctness of this ruling, depends upon the construction and effect to be given to certain congressional legislation, as applied to the facts.

The following is a summary of these acts and of the material facts:

By act of Congress of June 3, 1856, (11 U. S. Stat. at Large, 20) it granted to the State of Wisconsin for the purpose of aiding in the construction of a railroad from Fond du Lac northerly to the state line, every alternate section of land, designated by odd numbers for six sections in width, on each side of such contemplated railroad.

Section 2 of the act provided that the lands remaining to the United States, being the even numbered sections, should not be sold for less than *double the minimum price* of the public lands, that is, for not less than $2.50 per acre, and should not be subject to *private entry*, until they had been first offered at public sale at such increased price.

This grant, subject to its terms, conditions and restrictions, was accepted by the State, (Private and Local Laws of Wis. for 1856, ch. 118) and granted by it to a corporation created for the purpose of receiving it and building the contemplated road, called the Wisconsin & Superior Railroad Company, (Private and Local Laws of Wis., ch. 137), and by subsequent legislation and the action of the corporations therein mentioned, (Private and Local Laws of Wis for 1857, ch. 117, and Private and Local Laws of Wis. for 1859, ch. 108), this land grant became vested in the Chicago & Northwestern Railway Company.

Before 1859 the line of the railroad had been located, and the lands affected by the grant had been surveyed and ascertained, but none of them had been brought into market.

The lands in controversy are within six miles of such line, in *even* numbered sections, and were duly offered at public sale at $2.50 per acre, on the 3d of May, 1859, pursuant to a proclamation of the President, but were not sold, but they became subject to private entry *at* $2.50 *per acre.* None of the even numbered sections along the line of the road further north than township 33, were so offered

By a joint resolution of Congress of April 25, 1862, (12 U. S. Stat. at Large, 618), a change in the line of the railroad thus located was authorized, but no change was made in the quantity or location of the lands granted to the State to aid in its construction. The joint resolution provided, however, (sec. 3), "that the Secretary of the Interior be and "he is hereby authorized to cause all *even* sections or parts of *even* sec- "tions of public lands, that may be brought within six miles of the *new* "line of railroad as herein provided for, to be sold *at the same price and* "*in the same manner*, as those have been upon the *originally located*

"*route* of said railroad; and *all purchasers* or their heirs or assigns, *within* "*the six mile limits of the said originally located route, who shall be* "*more than six miles from the new line of route herein authorized, and* "*who have paid the sum of* $2.50 *an acre*, shall have the right, either "to exchange their location upon the line as at first established to the "new line, *upon the same terms and in like quantities, and in the same* "*manner*, as on the line first established as aforesaid, or at their option, "*to enter without further payment* any where in the Menasha land dis- "trict in the State of Wisconsin, an additional quantity of public lands, "subject to private entry, at $1.25 an acre, *equal to the quantity entered* "*by them at* $2.50 *an acre*, so that the lands originally entered by them "shall be thus reduced to the rate of $1.25 an acre." By the 4th sec- tion it was provided, that the even sections of public lands "reserved to "the United States, by the act of June 3, 1856, (the original grant) along "the originally located route of railroad north of the town of Appleton, "(the point where the change of route began) *and along which no rail-* "*road has been constructed, shall hereafter be sold at one dollar and* "*twenty-five cents per acre.*"

A change in the route of the railroad was thereupon made, and the lands in controversy are more than six miles from the *new* line and within six miles of the *old* line.

After such change of location, and in December, 1865, and January and March, 1866, the plaintiff in error made application at the Land Office in Menasha, (in which district the lands are situated), to enter the lands in question, and did purchase the same *at private entry* at $1.25 per acre, and the proper officer made and delivered to him the usual du- plicate certificates of such entries.

Afterwards, October 15th, 1866, these lands were offered at public sale at the price of $1.25 per acre, pursuant to the proclamation of the President, but were not sold. The lands in controversy had been marked on the plats as entered—and these entries having been reported to the General Land Office, the Commissioner, Nov. 8, 1866, canceled them, on the ground that when they were made, *these lands had never been offered at public sale at the minimum price of the public lands*, and were not therefore subject to private entry. On appeal to the Secretary of the Interior, MR. BROWNING, this action of the Commissioner was affirmed.

Afterwards, in pursuance of instructions from the General Land Office, notice was given by the proper officers that the land in question, which had been offered at public sale, but subsequently withdrawn from market by reason of canceled entries, would be restored and subject to private

entry on and after December 17, 1869, at $1.25 per acre. (Printed record, 35.) On the 18th of December, 1869, the defendant in error purchased these lands *at private entry* at that price, receiving the usual duplicate certificates of entry, upon which patents were subsequently, July 1, 1870, issued to him for the lands in controversy.

I.

Congressional legislation upon the subject of the sale of the public lands, consists of a great variety of provisions, as applicable to different districts, and lands differently circumstanced, but certain leading features or provisions have been incorporated into every act for the sale of government lands, so that a system or regular method has been adopted and in force for the last fifty years, a leading and most important feature of which, is that the public lands cannot be sold at private entry at the minimum price of $1.25 per acre, until they have first been offered at public sale, and remain unsold at the close of the sale. This is the plain, universally received and well understood meaning of the act of April 24, 1820, (Brightley's Dig., 480, § 125,) which declares that at the public sale therein provided for, "the price at which the public lands shall be "offered for sale, shall be one dollar and twenty-five cents per acre, * "* * and all the public lands which shall have been offered at *public* "*sale*, * * * according to law, and remain unsold at the close of "such public sales, shall be *subject to be sold at private sale by entry*, "at the land office at $1.25 per acre, to be paid at the time of making "such entry."

This is the general provision under which alone, the public domain, becomes subject to private entry.

Its object is to secure to the citizen the right to compete for the particular lands offered, and to the government the increased price above $1.25, which such competition would afford; and it has been the ruling both in the Departments and in the Courts, from the earliest period, that until the lands are so offered to the highest bidder, they do not become subject to sale at private entry. *Johnson v. Towsley*, 13 Wall., 88; 2. Opinions of Attorney Generals 200; 3 id., 274; 4 id., 167.

But for the land grant legislation which has been cited, the case would be too plain to admit of doubt or argument.

It is true that these lands were offered at public sale, while they were affected by the provisions of the act of June 3, 1856, "at *double* the minimum price of the public lands when sold," and remained unsold at the close of the sale, and then became subject to *sale at private entry*

at that price—but not at the price of $1.25 per acre. The government had not, nor had its citizens had the benefit of competition, afforded by a public sale of these lands, when offered at $1.25 per acre. As to the margin between those two prices, no such opportunity had been afforded, when the plaintiff in error made the entries under which he claims. And it should be borne in mind that he never offered to purchase at double the minimum price, but bases his right solely upon his alleged purchase at $1.25 per acre.

The effect of the 2d section of the act of June 3, 1856, was to enable government to realize as much for its lands, and perhaps at an earlier period, as if no such grant had been made; by selling the half it retained at not less than double the minimum price, while the location and prospect of the early completion of the road would stimulate land sales.

The joint resolution of April 25, 1862, then intervenes, enabling the company which was building the road, to re-locate that portion of its line north of Appleton; and such re-location was made, leaving all these lands which were within the six mile limits of the *old* location, much more than six miles distant from the *new* location.

An examination of its provisions will show that the sole purpose of it, was not to create any new or different rule or regulation as to the sale of the public lands, but to transfer to the even numbered sections within the six mile limits of the *new* location, the conditions and incidents as to sale and disposition, which had been attached to those sections within the limits of the *old* location, and to leave the unsold portions of those sections within the original six miles limits, *in the same condition as to sale and disposition as though they had never been in any manner affected by the land grant act in question.* In other words, *they were returned or remitted to the general body of the unsold public domain, to be sold and disposed of according to the general system provided for by the act of* 1820, *already cited.*

Looking at the exigencies in which this joint resolution had its origin, and the general system of legislation on the subject of the sale of the public lands, and the policy in which it is founded, we find nothing in conflict with this conclusion; but everything in harmony with it. And, obviously, there was no reason why any different rule should have been adopted. The provision in the joint resolution that these lands "shall hereafter be sold at $1.25 per acre," means simply that the sum of $1.25 shall be the *minimum* price, as it is of most other government lands, leaving the question as to *how they should be sold*, to be governed and determined by the *general system* for the sale of public lands. If it had been

intended that they should be sold at that price at *private entry*, without first being publicly offered, to secure competition, Congress would have employed the language which it ordinarily uses to express that intention. It would have so provided, in so many words.

The expressions "private entry" and "sale at private entry," more than fifty years ago had acquired a fixed, definite and well settled meaning in the law, as much so as any technical term or expression known to the common law. *Chotard v. Pope*, 12 Wheat., 586.

Recurring again to the provisions of the joint resolution of April 25, 1862, we find that the first section authorizes a change of the line of the road, but the company is still required to select its lands along and according to the length of the old route.

All other of its provisions are subsidiary and incidental only. They provide that the same conditions, restrictions, &c., as to sale, both as to *price and manner* of sale, which had been in force in the case of the *even* numbered sections within the six mile limits of the *old* route, shall be imposed upon or *transferred*, to the *even* numbered sections within the six mile limits of the *new* route.

And as a measure of indemnity *merely*, to those who had purchased within the six mile limits of the *old* route, and who by the change of location were left more than six miles from the *new* line, and who had purchased and paid $2.50 per acre for their land; and as a compensation for the disappointed expectations, which may have induced such purchases, that a railroad would be soon constructed within six miles at least of their lands; the right was secured to them, either to exchange their location or purchase on the *old* line, for lands within six miles of the *new* line, "upon the same terms, in like quantities and in the same manner, as on "the line first established as aforesaid; or at their option to *enter* with- "out further payment, anywhere within the Menasha land district in the "State of Wisconsin, an additional quantity of land, *subject to private* "*entry at* $1.25 *per acre*, equal to the quantity entered by them at $2.50 "per acre, so that the lands originally entered by them shall be thus re- "duced to the rate of $1.25 an acre."

The reference here is to lands "subject to private entry at $1.25 per acre—not to land "to be sold at $1.25 per acre." This provision had its origin entirely in what had occurred, and was a just indemnity for the disappointed expectations of those who had purchased land at "double the minimum price of the public lands when sold" along the *old* line, upon the faith of the location and hope of the early completion of the road, the route of which was thus authorized to be changed. This sec-

tion had nothing in its provisions which could in any way affect subsequent purchasers of lands within the six mile limits of the *old* route. *As to lands within the old limits remaining unsold, they stood in law, in respect to a sale of them, in the same condition as though the land grant act had not been passed, and there was no reason or cause whatever either in their condition, in the nature of things, or in what had transpired in reference to them, which would or could afford or suggest a different rule or course for their sale or disposition, than was provided by the act of* 1820, *for the sale of the public lands generally, the minimum price of which was* $1.25 *per acre.*

But the argument and claim of the plaintiff in error, rests upon a strict adherence to the *mere literal, insulated expression* of the fourth section of the joint resolution, considered separately and detached from the provisions of the *general system*, prescribed by Congress for the sale and disposition of the public lands, of which this provision forms a part; declaring that even numbered sections within the six mile limits of the *old* route "and along which no railroad had been constructed, should thereafter be sold at $1.35 per acre," and depends upon maintaining that the provision that they should be sold at that price, necessarily subjected them to *sale at private entry* at $1.25 per acre, without first offering them at that price at a *public* land sale, pursuant to the general provisions of law as contained in the act of 1820, above cited.

The joint resolution having taken these lands out of the exceptional condition which they had occupied under the land grant act, as compared with the public lands generally, there was no occasion to provide in detail how they should be sold. Their exceptional condition once ended, the general provisions of law for the sale of public lands at once attached.

If it had been the intention of Congress, that this condition being determined, a different course was to be pursued in selling them, than in the sale of public lands generally, it would have expressed that intention in clear and unmistakable terms. It is therefore obvious, that Congress intended only by this section of the joint resolution, to fix the minimum price of these lands, and to restore them to their original condition, before they became affected by the land grant act.

No portion of the *even* numbered sections, reserved to the United States, within the six mile limits of the original location of the road, north of township thirty-three (33), had ever been offered *at any public land sale, at any price*, prior to the passage of the joint resolution of April 25, 1862. It is alleged and admitted that the original route was located through to the northern terminus on Lake Superior, a distance of

fifty miles still further north. Hence there was a strip of land, equivalent in width to six miles and fifty in length, lying along the *old* route, north of the lands in question, reserved to the United States, (about 180,000 acres,) which had not been offered at any land sale, at any price, while all south of that point to Appleton, where the change of location began, including the lands in question, had been offered at $2 50 per acre, but not at $1.25 per acre.

Counsel for the plaintiff in error contends, that the lands south of township thirty-three (33) had become subject to *private entry*, at $2.50 per acre, by the action of the General Land Office, and by the joint resolution of April 25, 1862, had become subject to such entry at $1.25. But how about the lands lying north of township thirty-three, (33) which had never been offered at any public sale, and as to which no competition as to price or sale had ever been afforded? They had not become subject to private entry at any price. Was it intended to forego the usual competition as to these lands? And did Congress intend to prescribe one rule for the sale of the lands within the original six mile limits south of the north line of township thirty-three, (33) and another for those north of it; and all this without anything in the joint resolution in question, to indicate or prescribe such a discrimination? Was it not rather the intention of Congress that all these lands, both south and north of the north line of township thirty-three (33), should be subject to the same rule, and remitted to the provisions of the act of 1820 in that respect?

Again, it is contended that the words of the 4th section of the joint resolution are mandatory, and the lands in question were required as a matter of law to be sold, at the price of $1.25 per acre.

By the provisions of the 6th section of the act of 1820, it is provided that "where two or more persons apply for the purchase *at private sale*, of the same tract, at the same time, the Register shall determine the preference, by forthwith offering the tract to the highest bidder. Bright. Dig., 480, § 128. So that according to the construction contended for, a different rule has been prescribed for the sale of the lands in question, than was ever prescribed by Congress in any other case. It is not easy to see, why if one provision of the act of 1820 is applicable to the sale of these lands, all of its provisions are not

Sales of the public lands are either *public* or *private*. If *private* the law fixes the price, except in the application of two or more persons for the same tract. The construction contended for by the plaintiff in error, restricts the meaning of the words "shall be sold" to *private* sales only; contending that *public* sales were not contemplated—that there was no

warrant in law for selling any of these lands, *under any circumstances*, for more than $1.25 per acre

This construction or claim, rests upon an imperfection of language, or perhaps a want of entire accuracy or complete specification, which might have been used or adopted in the legislation in question. It depends upon adhering to the letter of the law, and ignoring its spirit and meaning, and the exigencies in which it was framed and which it was designed to meet. It is unphilosophical and tends to the establishment of an exception to a general system, without any reason whatever calling for or justifying it, and ignores entirely the occasion and circumstances under which the provision was framed, as well as the end obviously sought to be accomplished by it.

II.

But there is a general principle of construction, which comes to our aid, if need be, which is that "several acts *in pari materia*, and relating to "the same subject, are to be taken together and compared in the con- "struction of them, *because they are considered as having one object in "view, and acting upon one system.* 1 Kent Com., § 463, and when "there are different statutes *in pari materia*, though made at different "times, or having expired, and not referring to each other, *they shall be ta- "ken and construed together as one system, and as explanatory of each "other.*" Per LORD MANSFIELD in *Rex v. Loxdale*, 1 Burr., 447.

Earl of Aylesbvrg v. Patterson, Doug. 25.
Duck v. Addington, 4 Term, 450.
Ex Parte Drydon, 5 Id. 419.
Smith v. People, 47 N. Y., 339.
The Harriet, 1 Story, 251.
United States v. Hewes, Crabbe, 307, 318.
Smith on Const. Law, 751, et seq.
Sedgwick on Const. Law, 147.
Stuart v. Maxwell, 16 How., 160.

And "in doubtful cases, courts should compare all parts of a statute, "and different statutes, *in pari materia*, to ascertain the intention of the "legislature; and *however broad* some of its expressions may be, yet if "on such examination, it shall clearly appear that they *were intended to "be limited* by other provisions of the same act, *or other acts upon the "same subject*, it is not improper to restrain them accordingly." Per

LIVINGSTON, J. *Sloop Elizabeth*, 1 Paine C. C. 10. Smith on Const. Law, 640.

And statutes relating to the sale and disposal of the public lands of the United States, are statutes *in pari materia*, and must all be construed together.

Chotard v. Pope, 12 Wheat. 586.
2 Opin. Att'y Gen'ls, 44, 308.
Johnson v. Towsley, 13 Wall. 72.
Patterson v. Winn, 11 Wheat. 386.

Again, "that which is within the intention of the makers of a statute, is as much within the statute, as if it were within the letter, and a thing within the letter of the statute, is not within the statute, unless it be within the intention of the makers." Per THOMPSON, Ch. J., in *People's Utica Insurance Co.*, 15 Johns, 380, 381.

Finally, the construction of the 4th section of the joint resolution of April 25, 1862, for which we contend, which we submit is warranted by the context, and by the principles of construction recognized and enforced in the cases cited, brings the transaction as we seek to maintain it, into entire harmony with the general system for the sale and disposition of the public lands, with the manifest legislative intention of Congress, and fulfils every practical end or necessity growing out of the exigencies which gave rise to the act. At the same time it accomplishes equal and exact justice as between the government and such of its citizens as had purchased along the old route at $2.50 per acre.

It does not place these lands as to conditions and terms of sale, under an exceptional or arbitrary rule, where there is no reason or necessity growing out of the circumstances of the case or the nature of things, upon which to found the exception contended for, as does the construction contended for by the plaintiff in error; but it secures in reference to them what the *general* act of 1820 does, in reference to the sale of the public lands generally, the right and benefit to the citizen and the United States of bidding and competition above $1.25 per acre.

This construction too, is in accord with the practice and ruling of the Department for the sale of the public lands, upon this subject, from the earliest period; of such long standing that it has become a part of the law itself; custom being the best interpreter of it. It has become a fixed and settled rule concerning the sale of the public lands—a rule of property which ought not to be now disturbed or departed from, except upon the most sound and cogent reasons. In this case we are unable to see that any such are shown.

For these reasons, these lands were not subject to private entry when the plaintiff in error attempted to purchase them; and having been regularly entered by and patented to the defendant in error, he has both the legal and equitable title.

The judgment of the Supreme Court of the State of Wisconsin to this effect, it is submitted, should be affirmed.

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